

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 74-1138

*Original*

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*pg 5*

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

*Appellee,*

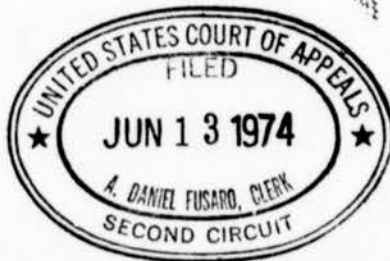
*vs.*

THOMAS JOSEPH CARROLL, VINCENT McCLOSKEY and  
WILLIAM McCLOSKEY,

*Appellants.*

## **APPELLANTS' APPENDIX**

Volume 1, pp. 1a - 300a



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FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

v.

THOMAS JOSEPH CARROLL, JOHN LEE a/k/a  
"JACK", VINCENT McCLOSKEY, a/k/a "MIKE",  
ROBERT E. RIPPY, a/k/a "RIPPER", CHESTER  
CRAWFORD, PAUL CRAWFORD, TERENCE LEWIS  
MYERS and GEOFFREY MATTHEWS MANN,

Defendants

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
NEW YORK.

CASE NO. 73 CR 855 CH

JUDGE RETENNA

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GOVERNMENT EXHIBITS IN EVIDENCE ON TRIAL

Exhibit No.

3A	Employment record William Hickey
5	Medical Examiner's report William Hickey
8	Motel registration card
9	Motel Registration card
10	Motel Registration card
11	Motel registration card
12	Motel registration card
15	Motel registration card
16	Motel registration card
17	Motel registration card
18	Corporate resolution for Meadowlands Bank
19	Corporation signature card
20	photostatic copies of 3 checks - front and back
21	Bank resolution Plaza National Bank
22	Signature Card National Bank of Secaucus
23	Photostatic copy of cancelled check for cash - front and back
24	Bank statement Plaza National Bank
26	Telephone list Maria Vasquez
27	Telephone toll charges calling No. 276-6220
28	Telephone toll charges calling No. 201-363-3347
29A	Telephone toll charges calling No. 201-363-3347
29B	Telephone toll charges calling No. 201-363-3347
29C	Telephone toll charges calling No. 201-363-3347
30	Police Blotter Entry Step Van
31	Telephone tolls - calling No. 202-829-7657
32	Car rental Records Eileen Holder
33	Jim's Auto Body Service
34	Palisade Towing Corp.
35	Records from General Post Office and Federal Reserve bank re registered mail
36	Items of Registered Mail
37	List of Registered Mail from Brokers and processing service
38	List of Registered Mail
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41	List of Registered Mail

DEFENDANTS' EXHIBITS IN EVIDENCE ON TRIAL

A	Original and copy of U.S. Attorneys Letter re Chester Crawford
D	U.S. Attorneys letter re Myers plea
E	Photograph of Beckman and William Street vicinity
E-1	Photograph of Beckman and William Street vicinity
E-2	Photograph of Beckman and William Street vicinity
E-3	Photograph of Beckman and William Street vicinity
E-4	Photograph of Beckman and William Street vicinity
E-5	Photograph of Beckman and William Street vicinity
E-6	Photograph of Beckman and William Street vicinity
E-7	Photograph of Beckman and William Street vicinity
F	Gun Flyer
G	Recognition New Jersey Court witness Mann
H	Arrest record Geoffrey Mann
I	U.S. Attorney letter re Mann plea



(01)	ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBURSED
	Fine,					
	Clerk,					
	Marshal, - 2 - /					
	Attorney,					
	Commissioner's Court,					
	Witnesses,					
	18:371 Consp. to rob U.S. mail truck (Ct1)					
	18:1111, 1114 & 2 Murder of Postal guard					
	during the course of the robbery. (Ct2)					
	18:2114 & 2 Assault. jeopardizing the life of custodian of U.S. Mail. (Ct3)					

DATE	PROCEEDINGS
10-17-73	Filed indictment. (Related to 73Cr855) Assigned to Judge Metzner for all purposes. MacMahon, J.
10-22-73	JOHNSON- (Atty. present) Deft. waives reading of the indictment and pleads not guilty. Motions by Nov-16-73 - Trial Nov-26-73 - bail conditions cont'd.-- Metzner, J.
10-27-73	McCloskey- (Atty. present) Deft. waives reading of the indictment and pleads not guilty - Motions by Nov-16-73 - Trial Nov-26-73 - bail conditions cont'd. --
Nov. 12-73	Johnson--(atty. present) deft. withdraws his plea of not guilty and plead GUILTY to Count 1. Plea accepted. PSI ordered. Sentence to be held on Dec. 17, 1973. Bail contd. Metzner, J.
Nov. 14-73	MCCLUSKEY JOHNSON Filed affar. by govt. of John J. Kenney in support of govts.

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Judge Metzner

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	oral motion to join this indictment with indictment 73 CR 855 for the purpose of trial.		
Nov. 21-73	MCCLOSKEY--Filed Consent order--ORDERED that the bail limits as prescribed in the defts. bail bond executed on Sept. 24, 1973 be and they hereby are ext. to include the Southern and Eastern Districts of NY and the Dist. of Florida for the purpose of returning to his home to conduct his usual business activities; ORDERED that the deft. shall return to the SDNY and appear before this court within 24 hrs. of the receipt by his att., etc. as indicated. Metzner, J. (filed in 73CR855).		
Dec. 11-73	Filed Government Bill of Particulars		
Dec. 11-73	Filed ORDER compelling Chester Crawford to testify and produce evidence at the trial pursuant to Title 18, U.S.C. Sec. 6002-6003 ret. 12/11/73 - Metzner, J. (by Govt.)		
Dec. 14-73	Filed ORDER for Government compelling Paul Crawford to give testimony and other information at said trial.--Metzner, J.		
Dec. 17-73	Filed Government ORDER Compelling Geoffrey Matthews Mann to testify and produce evidence at trial. -Metzner, J.		
Dec. 13-73	Filed Government ORDER Compelling Terrence Dewey Myers compelling to testify and produce evidence at trial etc. - Metzner, J.		
Dec. 19-73	Filed Government Bill of Particulars		
Dec. 21-73	Filed Government Order compelling John Turner to testify and produce at the trial etc.		
Dec. 26-73	Filed Governments affdvt. in opposition to deft. McCLOSKEYS motion to adjourn the trial ect. (filed in 73 CR 855)		
Dec. 10-73	WILLIAM MC CLOSKEY- Jury trial begun before Metzner, J. (indictments 73 CR 855 and 73 CR 972 are consolidated for trial -- see entries on 73 CR 855)		
Dec. 11-73	William McCloskey - trial continued		
Dec. 12-73	" " trial continued		
Dec. 13-73	" " trial continued		
Dec. 14-73	" " trial continued		
Dec. 17-73	" " trial continued		
Dec. 18-73	" " trial continued		
Dec. 19-73	" " trial continued		
Dec. 20-73	" " trial continued		
Dec. 21-73	" " trial continued		
Dec. 24-73	" " trial continued		
Dec. 26-73	WILLIAM Mc CLOSKEY- Trial continued and concluded. Jury Verdict: Deft. guilty on counts 1-2-3. P.S.I. ordered - sentence on Jan-25-74 - all motions reserved for day of sentence, all papers to be filed by Jan-23-74 - Defendant REMANDED. --- Metzner, J.		



DATE	PROCEEDINGS
Jan. 9-74	HARRY JOHNSON - FILED JUDGMENT (atty. present) it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FOUR (4) YEARS on Count ONE (1). Counts 2 and 3 are dismissed on motion of defendant's counsel with the consent of the Government. The court recommends commitment to a Federal Prison nearest Washington, D. C. - Carter, J.
Jan. 16-74	JOHNSON - Filed Order on deft.'s letter dtd. 1/16/74 an application for reduction of reduction of sentence. The application to reduce sentence is denied - So ordered - Metzner, J. (m/n)
Jan. 23-74	MC CLOSKEY - Filed Notice of Motion ret. Jan. 25, 1974 at 10:00 A.M., for an Order granting Judgment of Acquittal notwithstanding the verdict etc.
Jan. 22-74	JOHNSON - <i>Filed</i>
Jan. 25-74	McCLOSKEY, WILLIAM - Filed JUDGMENT (atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment a term of LIFE on count TWO(2). TWENTY-FIVE (25) YEARS on count THREE(3) and FIVE (5) YEARS on count ONE (1). Sentence on count (1) and (3) to run concurrently w/each other and concurrently w/the sentence imposed on count (2). It is adjudged that the defendant is to remain in the Federal Detention Headquarters at 427 West St., N.Y., pending appeal - METZNER
Jan. 25-74	McCLOSKEY, William - Filed Memo-endorsed on motion dated 1/23/74.-- This motion is denied. See transcript of sentencing of this date. So ordered - Metzner. (m/n)
Jan. 24-74	JOHNSON - Filed CJA 20 Copy 2 - approving payment to Florence Shientag, and Affidv (mailed copy 1 of CJA 20 to Adm. Office).

A TRUE COPY

RAYMOND F. BURGHARDT, CLERK

By *[Signature]*  
Deputy Clerk

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U. S.:
vs.		John J. Kenney, AUSA
1. THOMAS JOSEPH CARROLL		264-6425
2. JOHN TURNER a/k/a Jack		1-8-74
3. VINCENT MC CLUSKEY a/k/a Mike (13112 MYERS) (10-10-73)		
4. ROBERT E. RIPPY a/k/a Ripp		12-26-73
5. CHESTER CRAWFORD		1-8-74 For Defendant:
6. PAUL CRAWFORD		
7. TERRENCE DEWEY MYERS		1-8-74
8. GEOFFREY MATTEWS MANN		1-8-74

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(12) Fine,					
Clerk,					
Marshal, -2-6-7-8-1-3					
Attorney,					
Commissioner's Court, T.18					
XXXXXX Secs, 371 Consp.					
to steal U.S. mail and Jeopardize					
the lives of P.O. employees. (Ct.1)					
Sec.1111,1114 (Murder of postal employee. (Ct.2)					
Sec.2114 (Assault on postal employee (Ct.3) (Three Counts)					

DATE	PROCEEDINGS
9-11-73	Filed indictment. (Related to 73Cr533) (Referred to Judge Metzner)
Sep-12-73	Robert E. Rippy- Deft. (Atty. present) pleads not guilty. Hearing as to deft. Rippy held. Motion denied. <del>Indictment returned.</del> -- Metzner, J.
Sept.12-73	Rippy- Writ adjourned to 9-17-73. Metzner, J.
Sep-17-73	Robert E. Rippy- Deft. produced on writ - (Atty. present) Having pled not guilty, Writ satisfied.
	John Turner- (Atty. present) pleads not guilty and is severed from trial. Bail conditions continued
	Chester Crawford- (Atty. present) pleads guilty to count 2 - murder in the 2nd degree a lesser included offense. Plea accepted. Bail conditions as set in 73 Cr Cr. continued.



DATE	PROCEEDINGS	PLAINTIFF	DEFENDANT
Sep-17-73	continued.		
	Paul Crawford- (Atty. present) pleads guilty to count 1. Plea accepted. Bail conditions as set in 73 CR 606 continued.		
	G.M. Mann- (Atty. present) pleads guilty to a lesser included offense - murder 2nd degree. Plea accepted. Bail conditions as set in 73 Cr 606 continued.		
	T.D. Meyers (Atty. present) pleads guilty to a lesser included offense - murder 2nd degree. Plea accepted. Bail conditions as set in 73 Cr 606 continued.		
	V. McClusky- (Atty. present) Deft. is committed by order of the Court to Springfield Mo. pursuant to 18:4246		
	T.J. Carroll- (Atty. present) Deft. pleads <del>not</del> guilty - plea accepted. Bail conditions as set in 73 CR 606 are continued.		
	Metzner, J.		
9-19-73	McCLUSKEY- Filed order that the defendant is committed to the custody of the Atty. Gen'l for further study and report as to the mental competency of the defendant to stand trial. -- Metzner, J. (c/copies issued to Marshal)		
9-17-73	McCLUSKEY- Filed report by Dr. David Abrahamsen, M.D. and ) report by Dr. Stanley L. Portnow, M.D. (ref. to Deft.)		
9-21-73	TURNER- (Atty. present) withdraws his plea of not guilty and pleads guilty to count One (1) and to count Three(3) to a lesser offense included. Plea accepted. Bail conditions continued as set in 73 CR 606 - Metzner, J.		
Sep-24-73	MANN- Filed CJA appointment of Robert Mitchell, 51 Chambers St., NYC as counsel for defendant. -- Metzner, J.		
Oct-11-73	RIPPY- Filed CJA appointment of S.D.C. Reporters relating to taking of plea of co-defendants, questions and answers relating thereto. -- Metzner, J.		
Oct.16-73	Filed one sealed envelope, sealed pursuant to order of the Court dated Oct. 16, 1973. The envelope contains papers submitted by the government for in-camera inspection by the Court and which are the subject of the court's opinion dated Oct. 16, 1973 in connection with deft. McCluskey. Metzner, J.		
Oct.16-73	Filed OPINION # 39926--Pursuant to the court's direction in its order dated Aug. 6, 1973 the govt. originally answered that it had no knowledge of any wiretaps of deft. McCluskey. The govt. need not turn over these tapes to comply with the court's order for discovery. I also find that the order entered in the USDC, of New Jersey was in respects legal and proper. The papers submitted by the govt. on Sept. 15, 1973 shall be sealed and maintained by the Clerk of the C as part of the record in this case. So ordered, Metzner, J. m/n		



USA vs. Thomas Joseph Carroll, et al.

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JUDGE METZNER

DATE	PROCEEDINGS
Oct-30-73	Rippy- Filed affirmation and notice of motion for an order granting inspection of Grand Jury Minutes. - ret. Nov-6-73 at 2:30 AM
Nov-7-73	Rippy- Filed defendants memorandum in support of motion to inspect Grand Jury Minutes, etc.
Nov-7-73	Rippy- Filed Government's affdvt. in opposition to defts motion for inspection of grand jury minutes.
Nov-7-73	Rippy- Filed Opinion #39986 denying defendants motion for inspection of grand jury minutes - Metzner, J. (m/n)
Nov.7-73	Filed OPINION #39985--I find that the orders authorizing the intercept of wire and oral communications were in all respects legal and proper under the New Jersey Wiretapping and Electronic Surveillance Act 2A NJ.Stat 156A-1--156A-26, which tracks the federal statute, 18 USC 2510, et seq. The govt. is therefore not required to obtain these recordings from the State of New Jersey and to turn them over to the defts. in order to comply with the courts discovery order dated Aug., 6, 1973. The papers submitted by the govt. on Sept. 17, 1973 and Oct. 19, 1973 shall be sealed and maintained by the Clerk of this court as part of the record in this case. So ordered, Metzner, J.
Nov.8-73	Filed one sealed envelope in accordance with Opinion # 39985 dated Nov. 7, 1973. Metzner, J.
Nov.21-73	MCCLOSKEY--Filed Consent Order--Ordered that the bail limits as prescribed in the defts. bail bond executed on Sept. 24, 1973 be and they hereby are ext. to include the Southern and Eastern Districts of NY and the Dist. of Florida for the purpose of returning to his home to conduct his usual business activities; ORDERED that the deft. shall return to the SDNY and appear before this court within 24hrs. of the receipt by his atty., etc. as indicated. Metzner, J. (also see 73CR972)
Nov.30-73	MCCLUSKEY V.--Filed letter from the U.S. Dept. of Justice, Bureau of Prisons, Springfield, Missouri re: psychiatric observation and copies of report attached.
Nov.30-73	Filed Govt. Affidavit for W/H/C writ satisfied -- 12/4/73
Dec.6-73	THOMAS CARROLL--Filed Deft's Motion of Co-Counsel
Dec.7-73	McCLOSKEY--Filed for deft. Notice of Motion returnable 12/10/73 at 10:00 A.M. for an Order severing the deft. from this action and permitting him to plea to the ind
Dec.7-73	McCLOSKEY--Filed Affidavit and Notice of Motion returnable 12/10/73 at 10:00 A.M. for order 1, adjourning the trial, 2 Severance, 3 Granting inspection, 4 Extending time to dismiss, 5 Dismissing-Ct.1, 6 Dismissing Indictment etc.
Dec.10-73	THOMAS CARROLL - Filed Deft. Notice of Motion returnable 12/10/73 for Judgment of Acquittal--Metzner, J.
Dec.11-73	THOMAS CARROLL--Filed Memo endorsed as the above motion--This motion is denied after exhibiting the original indictment on file in this court to the movant So ordered - Metzner, J. (m/n)
Dec. 11-73	Filed Government Bill of Particulars
Dec. 11-73	Filed ORDER compelling Chester Crawford to testify and produce evidence at the trial pursuant to Title 18, U.S.C. Sec.6002-6003, ret. 12/11/73--Metzner, J. (by Govt.

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DATE	PROCEEDINGS
Dec.12-73	McGLOTHLY- Filed Notice of Motion returnable 12/12/73 at 10:00 A.M. for an order preventing the admission into evidence by the prosecution of any other criminal of the accused.
Dec.5-73	CARROLL ET AL. - Filed CJA authorization to pay S.D.Court Reporters for proceedings of 9/17/73. Original mailed to Wash. D. C.
Dec.12-73	CARROLL & RIPPY - Filed C.J.A. Authorization to pay S.D.Court Reporters for Daily Tr proceedings. Orig. mailed to Wash.
	<div data-bbox="1007 1161 1354 1260">Cont'd p. 5</div> <div data-bbox="1049 1891 1148 2057">D</div>



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U.S.A. V. THOMAS JOSEPH CARROLL ET AL.

DATE	PROCEEDINGS
Dec. 12-73	CARROLL--Deft. Filed for financial aid.
Dec. 12-73	CARROLL--Filed letter addressed to Judge Metzner, and dtd 9/27/73 --- Filed carbon of letter dtd 10/4/73 add. to M.P. DiRanzo, from Norma C. Kleinberg, Law Clerk
Dec. 14-73	Filed for Government ORDER compelling Paul Crawford to testify and produce evidence at the trial--(The said Paul Crawford declined to answer questions at said trial)--Metzner, J.
Dec. 17-73	Filed Government ORDER compelling Geoffrey Matthews Mann to testify and produce evidence at trial etc. - Metzner, J.
Dec. 13-73	Filed for the Government Order compelling Terrance Dawey Myers to testify and produce evidence at trial, etc. - METZNER, J.
Dec. 17-73	Filed Government Affidavit for Writ of Habeas Corpus AD Testificandum
Dec. 19-73	Filed Government Bill of Particulars.
Dec. 21-73	Filed Government Order compelling John Turner to testify and produce evidence at trial.
Dec. 22-73	RIPPY- Filed defendants request to charge
Dec. 22-73	Filed Governments supplemental requests to charge
Dec. 22-73	Filed memo endorsed on deft. MC CLOSKEY'S motion filed on 12-7-73: This motion is denied. See Opinion filed in companion motion. So ordered - Metzner, J. (m/n)
Dec. 22-73	RIPPY- Filed defendants supplemental request to charge.
Dec. 22-73	McCLOSKEY- Filed Opinion #40149.....for reasons indicated, the motion to adjourn trial is denied, the motion to sever deft. McCloskey from this trial is denied. The motion to inspect the Grand Jury Minutes in indictment 73 CR 972, which does not name this defendant is denied. The Motion to extend the time to move to dismiss the indictment is denied. The motion to dismiss count one, the conspiracy count, is denied. To dismiss for lack of adequate counsel is denied; to dismiss indictment on basis that the overall conditions and happenings and incidents under which defendant has been held violated due process is denied. There is no basis for a suppression hearing, etc. -- The second formal motion again requests a severance and is repetitious of the requests which have already been disposed of. So ordered. - Metzner, J. m/n
Dec. 26-73	McCLOSKEY- Filed Governments affdvt. in opposition to defts. motion to adj. trial.
Dec. 10-73	McCLOSKEY- (Atty. present) Deft. pleads not guilty - plea accepted. Bail conditions as set in 73 CR 606 are continued.
Dec. 10-73	McCLOSKEY- Motion by the Government to amend the name of defendant on indictment from Vincent McCluskey to VINCENT McCLOSKEY is granted - no opposition. Metzner, J.
	THOMAS J. CARROLL, VINCENT McCLOSKEY, ROBERT E. RIPPY and WILLIAM McCLOSKEY (deft. from 73 CR 972) Jury trial begun before Metzner, J. cases 73 CR 855 and 73 CR 972 are consolidated for trial. Deft. Rippy produced in Court on Writ.
Dec. 11-73	Trial continued (Deft. Rippy produced on writ)
Dec. 12-73	Trial continued " " " " "
Dec. 13-73	Trial continued " " " " "
Dec. 14-73	Trial continued " " " " "
Dec. 17-73	Trial continued " " " " "
Dec. 18-73	Trial continued " " " " "
Dec. 19-73	Trial continued " " " " "
Dec. 20-73	Trial continued " " " " "
	Deft. RIPPY- motion to dismiss count one as to this deft. only is GRANTED. Metzner, J.

DATE	PROCEEDINGS
Dec-21-73	THOMAS J. CARROLL, VINCENT McCLOSKEY, ROBERT E. RIPPY and WILLIAM McCLOSKEY --- trial continued
Dec-26-73	Trial continued and concluded JURY VERDICT: THOMAS JOSEPH CARROLL: Guilty on counts 1-2-3 VINCENT McCLOSKEY: Guilty on counts 1-2-3 ROBERT E. RIPPY: NOT Guilty. WILLIAM McCLOSKEY: GUILTY on counts 1-2-3 (see endorsement on 73 CR 972 for this deft.) ----- CARROLL- P.S.I. ordered - Sentence on Jan-25-74 all motions reserved for day of sentence, all papers filed by Jan-23-74 Deft. REMANDED. V. McCLOSKEY- P.S.I. ordered - Sentence on Jan-25-74 all motions reserved for day of sentence, all papers filed by Jan-23-74 Deft. REMANDED. RIPPY- Writ satisfied. W. McCLOSKEY - see entry on 73 CR 972.  Metzner, J. -----
Dec-28-73	V. McCLOSKEY- Filed letter of John F. Martin dtd. 12-7-73 to Judge Metzner. Filed letter of John F. Martin dtd. 12-6-73 to Judge Metzner.
Dec-28-73	V. McCLOSKEY- Filed C.J.A. copy #5 - appointment of Edward S. Panzer, 299 B'way, NYC 10007 as trial counsel for deft. - Metzner, J.
Dec-28-73	V. McCLOSKEY- C.J.A. copy #1 mailed to A.O., Washington, D.C. for payment (appoint- ment of counsel Edward Panzer for trial)
Jan- 4-74	Filed Governments W/H/C to produce GARRETT B. TRAPNELL as a witness - Writ satisfied on 12-20-73 -- Carter, J.
Jan. 8-74	TURNER--FILED JUDGMENT (atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS on Count 1 and TEN (10) YEARS on Count (3). Count (1) is to run concurrently with the sentence imposed in Count 3. Count (2) is dismissed on motion of the defendant's counsel with the consent of the government. -- Metzner, J. (copies issued)
Jan. 9-74	CRAWFORD--FILED JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO AND HALF (2 1/2) YEARS on count ONE (1). Counts (2) and (3) are dismissed on motion of defendant's counsel with the consent Government.--Metzner, J. (copies issued)
Jan. 9-74	MYERS - FILED JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN FIVE (25) YEARS on count (2). Counts (1) and (3) are dismissed on motion of defendant's counsel with the consent of the Government. - Metzner, J. (copies issued)



DATE	PROCEEDINGS
Jan. 9-74	MANN- FILED JUDGMENT (atty. present) it is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY-FIVE (25) YEARS on Count TWO (2). Counts (1) and (3) are dismissed on motion of defendant's counsel with the consent of the Government. (copies issued)
Jan. 9-74	McCLOSKEY - Filed Order dated 9/13/73 with Marshal's return.
1-10-74	Filed transcript of record of proceedings, dated 8-6-73
1-10-74	Filed transcript of record of proceedings, dated 9-13-73
1-10-74	Filed transcript of record of proceedings, dated 12-4-73 (McCloskey)
1-10-74	Filed transcript of record of proceedings, dated 12-8-73
Jan. 9-74	Brown - Filed Marshal's return of Remand dtd 10/4/73.
Jan. 17-74	MANN - Filed CJA 20 for payment of Counsel Robert Mitchell. Metzner, J. copy to A.C. Wash. D.C.
Jan. 22-74	RIPPY - Filed Writ of Habeas Corpus ad Prosequendum - Writ Satisfied - Carter, J.
Jan. 22-74	MANN - Filed <del>copy</del> <i>to 10181 Ky. 1-8-74</i>
Jan. 22-74	MYERS - Filed <del>copy</del> <i>to 10181 Ky. 1-8-74</i>
Jan. 22-74	CRAWFORD - Filed <del>copy</del> <i>to 10181 Ky. 1-11-74</i>
Jan. 23-74	McCLOSKEY - Filed Notice of Motion returnable 1/25/74 at 10:00 A.M. as counsel can heard for Orders providing relief as indicated.
1-24-74	Filed transcript of record of proceedings, dated Dec 10, 11, 12, 13, 14 - 1973
1-24-74	Filed transcript of record of proceedings, dated Dec 17, 1973
1-24-74	Filed transcript of record of proceedings, dated Dec 20, 21, 24 + 26, 1973
Jan. 25-74	GARROLL, Thomas Joseph - FILED JUDGMENT (atty. present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of LIFE on count TWO (2) TWENTY FIVE (25) YEARS on Count THREE (3) and FIVE (5) YEARS on count ONE (1). Sentence on counts (1) and (3) to run concurrently with each other and concurrently with sentence imposed on count (2). It is adjudged that the defendant is to remain in the Federal Detention Headquarters at 427 West Street, N.Y., pending appeal/--METZNER, J.
Jan. 25-74	McCLOSKEY, Vincent - FILED JUDGMENT (atty present) It is adjudged that the defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of a LIFE on count TWO (2). TWENTY-FIVE (25) YEARS on count THREE (3) and FIVE (5) YEARS on count ONE (1). Sentence on counts (1) and (3) to run concurrently with each other and concurrently with the sentence imposed on count (2). It is adjudged that the defendant is to remain in the Federal Detention Headquarters at 427 West St. N.Y. pending appeal - METZNER, J.

DATE	PROCEEDINGS
Jan. 25-74	McCLOSKEY, Vincent -- Filed Memo-endorsed on Notice of Motion dated 1/23/74 -- This motion is denied. See transcript of sentencing of this date. So ordered Metzner, J. (m/n)
Jan. 25-74	THOMAS CARROLL - Filed Notice of Motion to have verdict of Jury set aside; for New Tr To enter Judgment of acquittal; to dismiss indict. etc. Filed Memo-endorsed re: above Motion for reasons indicated - Motion is denied - Metzner, J. (m/n)
Jan. 24-74	ROBERT RIPPY - Filed CJA 20 Copy 2 approving payment for Frederick P. Hafetz, and Affir- (Copy 1 mailed to AO Wash.D.C.).
Jan 25-74	THOMAS CARROLL- Filed Notice of Appeal to USCA from the final judgment dated 1-25-74.
Jan 25-74	VINCENT MC CLOSKEY: Filed Notice of Appeal to USCA from the final judgment dated 1-25-74.
Feb 4-74	WILLIAM McCLOSKEY: Filed consent to change attorney- Louis Mascaro 38 New St., Hungtinton, N.Y. substituted as atty. of record. So Ordered. Metzner, J.
Feb. 6-74	Filed (GEOFFREY M. MANN) memo endorsed on letter dated 2-1-74 The attached letter will be considered as an application for reduction of sentence. The Court has reviewed the file and under all the facts and circumstances that the application should be denied. So ordered. Metzner, J.
Feb 6-74	V. McCloskey: Filed commitment & return deft. delivered to Fed. Detention HQTS. 1-25-74.
Feb 6-74	CARROLL: Filed commitment & entered return. Deft delivered to Fed. Det. Hqtrrs. 1-25-74.
Feb 6-74	V. McCLOSKEY: Filed remand w/Marshal's ret. dated 12-26-73.
Feb 7-74	PAUL CRAWFORD: Filed warrant of removal on indictment.
Feb 8-74	CARROLL- Filed remand with Marshal's ret. dated 12-26-73.
Feb 11-74	THOMAS J. CARROLL: Filed application for leave to proceed in forma pauperis on appeal.
Feb. 11-74	CARROLL: Filed memo endorsed on defts. application for leave to appeal in forma pauperis-- Upon the filing of the finan cial affdvt. in for ma pauperis executed by deft. Carroll, this application to proceed in forma pauperis is granted. So ordered. Metzner, J.
Feb. 11-74	THOMAS J. CARROLL: Filed defts. financial affdvt.
Feb. 11-74	McCLOSKEY: Filed stipulation that the record on appeal in this action shall include actions which are related, 73 Cr 583, 73 Cr 606 in addition to 73 Cr 855 & 73 Cr 972, and that all exhibits in evidence on trial be included in the record on appeal.



CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE METZNER 73 CRIM. 589

D. C. Form No. 100 Rev.

TITLE OF CASE:

THE UNITED STATES

vs.

ATTORNEYS

For U. S.:

John J. Kenney, AUSA  
264-6425

- (1) THOMAS JOSEPH CARROLL  
(2) JOHN DOE, a/k/a "Jack"  
(3) VINCENT McCLUSKEY, a/k/a "Mike"  
(4) ROBERT E. RIPPY, a/k/a "RIPP"  
(5) CHESTER CRAWFORD  
(6) PAUL CRAWFORD  
(7) TERENCE DEWEY MYERS  
(8) GEOFFREY MATTHEWS MANN

For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation	Docket fee				
Title 18					
Sec. 371, 1111, 1114, & 2 2114 & 2.					
(Three Counts)					

DATE

PROCEEDINGS

18:371 Conspiracy to steal U.S. mail and jeopardize the lives of postal employees. Ct. 1) 18:1111, 1114 & 2. Murder of postal employee. (ct. 2) 18:2114 & 2. Assault on postal employees. (ct. 3)

6-14-73 Filed indictment.

Bench Warrants ordered as to defts. Ripp and Paul Crawford. Palmieri, J.

6-18-73 Thomas Carroll - Bail \$200,000.  
Vincent McCluskey - Bail \$200,000.  
Chester Crawford - Bail \$250,000.

Terrence Myers - to be assigned counsel by Magistrate  
Geoffrey M. Mann - to be assigned counsel by Magistrate.  
Court directs entry of not guilty pleas for each above five (5) defendants.  
All 5 defendants remanded in lieu of bail.  
Case assigned to Judge Metzner.

-- Wyntt, J.

6-20-73 Paul Crawford-Govt's application to vacate B/W. Granted.

Metzner, J.



DATE	PROCEEDINGS
6-20-73	VINCENT MC CLUSKEY-Filed order-Motion for reduction of bail denied--Metzner, J.
6-20-73	Robert Rippy-Filed affidavit for writ of H/C ad Pros. Ret.6/25/73.
6-14-73	RIPPY & CRAWFORD- 2 bench warrants issued.
6-25-73	Robert E. Rippy-Application by the Govt. to vacate B/W is granted. Metzner, J.
6-25-73	JEREMY M. LANN and THOMAS D. MITCHELL- Filed the following papers received from District of Columbia: Magistrate's record of proceedings (3) copy of S.D. indictment Warrant of removal on indictment (signed by Magistrate) Crim complaint Magistrate's warrant of arrest Bail Agency report Warrant of removal on complaint
7-19-73	LANN- Filed C.J.A. form copy #5, appointing Robert Mitchell, Esq., 51 Chambers St., NYC as counsel. -- Metzner, J.
6-6-73	JEREMY M. LANN-Filed Memo Endorsed This action is GRANTED. So Ordered METZNER, J.
6-25-73	VINCENT MC CLUSKEY-Filed Transcript of record of proceedings dtd. 6/19/73.

A TRUE COPY  
 BY *Raymond P. Burghardt* CLERK  
 RAYMOND P. BURGHARDT  
 Deputy Clerk

CRIMINAL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE METZNER

73 CRIM. 606

18a

D. C. Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

vs.

ATTORNEYS

For U. S.: 70h-6h25

John J. Kenney, AUSA

1) THOMAS JOSEPH CARROLL

2) JOHN DOE, a/k/a "Jack"

3) VINCENT McCLUSKEY, a/k/a "Mike"

4) ROBERT E. REPPY, a/k/a "Pipp"

5) CHESTER CRAWFORD

6) PAUL CRAWFORD

7) THOMAS DEAN WYLES

8) C. G. GIBBY, PATRICK WYNN

For Defendant:

(12) STATISTICAL RECORD

COSTS

DATE

NAME OR  
RECEIPT NO.

REC.

DISB.

J.S. 2 mailed

Clerk

J.S. 3 mailed

Marshal

Violation

Docket fee

Title 18

Sec. 371, 1111, 1111 & 2,  
2111 & 2

TYPED COPIES

DATE

PROCEEDINGS

18:371 conspiracy to steal mail from U.S. Mail Truck and jeopardize the lives of postal employees (ct.1)

18:1111, 1111 & 2 murder of postal employee (ct.2)

18:2111 assault on postal employee with dangerous weapon (ct.3)

6-19-73

Filed indictment  
assigned to Judge Metzner as a related matter (73 CR 583)

6-20-73

Deft with his atty. present PLEADS NOT GUILTY...Bail \$35,000. Deft remanded in lieu of bail.....Metzner, J.

6-21-73

Crawford, Paul-Filed appointment of Joseph T. Klempner 401 B'way .  
Jacobs Magistrate .


(over)

K

DATE	PROCEEDINGS
-25-73	<u>Rippy</u> -(atty. present) Pleads not guilty. Deft. remanded in lieu of bail.
	<u>Carroll</u> (atty. present) Pleads not guilty. Bail fixed at \$200,000. deft. remanded in lieu of bail.
	<u>McCluskey</u> (atty. present) Pleads not guilty. Bail fixed at \$200,000. deft. remanded in lieu of bail.
	<u>C. Crawford</u> (atty. present) Pleads not guilty. Bail fixed at \$250,000. deft. remanded in lieu of bail.
	<u>Myers</u> (atty. present) Pleads not guilty. Bail fixed at \$250,000. deft. remanded in lieu of bail.
	<u>Mann</u> (atty. present) Pleads not guilty. Bail fixed at \$250,000. deft. remanded in lieu of bail.
	Metzner, J.
6-26-73	Rippy-Filed appointment of CJA Atty Frederick P. Hafetz suite 1036 60 E St. Lincoln, Building New York 10017. Jacobs Mag.
6-26-73	Chester Crawford-Filed appointment of CJA Atty Jay Gold 36 W. 44th St. 869-8888 10036. Jacobs, Mag.
7-3-73	CARROLL- Filed notice of appearance by Michael P. Dizenzo, 15 Columbus Circle, NYC 10023 (Phone: 511-7740)
7-11-73	CARROLL- Filed affdvt. and notice of motion for discovery & inspection, a bill of particulars.
7-16-73	MEYERS- Filed affdvt. and notice of motion for (a) discovery and inspection (b) a bill of particulars
7-3-73	MEYERS- Filed Warrant of removal from the District of Columbia with Marshals return dtd. 6-12-73
7-3-73	MANN- Filed Warrant of removal from D.C. with Marshals return dtd. 6-12-73
	RIPPY- Filed affirmation and notice of motion for an order to suppress, disclosure, discovery & inspection.
7-19-73	CARROLL- Filed one envelope ordered sealed. (placed in vault Room 602) - Metzner, J.
	Thomas J. Carroll ) Atty. present - Bail fixed at \$200,000.
	Vincent Mc Cluskey ) defendants plead not guilty Bail fixed at \$200,000.
	Cester Crawford ) Bail fixed at \$250,000.
	above three defendants remanded in lieu of bail --- Metzner, J.
	Terrence D. Myers (Atty. present) Deft. pleads not guilty. Bail fixed at \$250,000. remanded in lieu of bail
	Geoffrey M. Mann- (Mr. Nogel present as temp. Attorney) - Deft. pleads not guilty. Bail fixed at \$250,000. - Deft. remanded in lieu of bail
	--- Metzner, J.
	<i>later - see above</i>
	<i>6-25-73</i>



DATE	PROCEEDINGS
7-24-73	Thomas Joseph Carroll- Filed MEMORANDUM denying defts application for reduction of bail. Trial will proceed on 9-10-73 -- Metzner, J. (m/n).
7-27-73	Paul Crawford- Filed affdvt. and notice of motion for discovery & inspection - ret. 8-10-73
7-27-73	Chester Crawford- Filed affdvt. and defendants notice of motion for pre-trial relief.
7-27-73	McGlosky- Filed affdvt. and defts notice of motion for pre-trial relief.
7-23-73	R.E. Rippy- Filed C.J.A. form cory 15 - appointing John McNally, Esq. as investigator and to pay expert services. - Metzner, J.
8- 1-73	R.E. Rippy- Filed memorandum of law in support of defts. motion for discovery.
7-23-73	Paul Crawford- Filed warrant of removal on indictment from District of Columbia with Marshals return - executed on 6-17-73
8-8-73	* Filed Order--enclosed affdt. was submitted by gov. pur. to court's direction that it explain why it would not divulge names of witnesses. The Court has read the affdt. and finds it sufficient to support the gov't. position. This affdt. shall be sealed and delivered to the Clerk of the Court and not opened until further order of the Court. So ordered, Metzner, J.
8-14-73	VINCENT McCLOSKEY- Filed affdvt. and notice of motion for copies of all indictments wherein Larry Dalia and John Turner are involved.
8-6-73	PAUL CRAWFORD- Filed MEMO END; This motion by deft. is granted as to item 1; otherwise denied. The government shall furnish the above information on or before Aug. 10-73. So Ordered. METZNER, J.
8-6-73	McCLUSKEY'S - Filed MEMO END; Deft. motion for B/P is disposed as follows: 1(a)-(d) denied; 1(e) granted *** 1(f)-(i) denied; 1(j) granted ***. Motion for discovery disposed of as follows: 1. Granted as movant's statements only; 2. granted to the extent that that there were such wiretaps and movant is an aggrieved party as defined in 18 U.S.C. Section 2510(11); *** The government shall furnish the above information on or before 8-10-73. So Ordered. METZNER, J.
8-6-73	CARROLL- Filed MEMO END; Motion granted in part and denied in part. So Ordered. METZNER, J. (see memo in file)
8-6-73	CHESTER CRAWFORD- Filed MEMO END; Motions granted in part and denied in part. So Ordered. METZNER, J. (see memo in file)
8-6-73	MYERS- Filed MEMO END; Motions granted in part and denied in part. So Ordered. METZNER, J. (see memo in file)
8-6-73	RIPPY- Filed MEMO END; Motions granted in part and denied in part, So Ordered. METZNER, J. (see memo in file)
8-6-73	Filed affdvt. of John J. Kenney.

DATE	PROCEEDINGS
4-27-73	Filed true copy of U.S.C.A. order that a reduction of the bail heretofore set by the District Court to \$ is hereby denied without prejudice to renewal of the motion in the District Court.
8-7-73	VINCENT MCCLUSKEY- Filed order that on defendants application to have substituted as his atty. of record JAY GOLDBERG, Esq. in place of Donald Hopper is granted. (m/n) -- Metzner, J.
8-20-73	Filed Governments bill of Particulars
8-2-73	MC CLOSKEY- Filed affdvt. and notice of motion for an order requiring Govt. to furnish certain names and addresses and to permit annexed proposed subpoena ret. prior to trial
8-21-73	MC CLOSKEY- Filed Governments affdvt. in opposition to defts motion filed on 8-2-73.
9-1-73	All defts.- Filed Governments affdvt. in re surveillance.
9-5-73	McCluskey--Filed notice of motion for an order providing names of wife and a list of veniremen must be turned over three days prior to trial on the ground that though death no longer remains as a punishment for the crime of murder, it is a capital offense, with affdvt. of Jay Goldberg in support of above motion.
9-5-73	Filed Govt.s Memorandum of Law in Opposition to Defts' Pre-Trial Motion.
9-10-73	Filed Govt. Affidavit in opposition to the Deft. VINCENT MCCLUSKEY's motion-seeking discovery.
9-7-73	Filed for deft. MC CLOSKEY-Notice of Motion, for an Order directing a mental competency hearing.
9-6-73	McCLUSKEY-Filed Order that Dr. David Abrahamesn, psychiatrist, to examine deft. -- Metzner, J.
9-12-73	Mc CLOSKEY- Filed order that on application, Dr. Stanley Portner, a qualified psychiatrist, be permitted to visit defendant at the Fed. House of Detention for the purpose of conducting examination of defendant. The doctor is to prepare a written report of his findings and conclusions and report to be submitted to U.S. Atty. and Judge Metzner on 9-11-73 -- Defendant is directed to pay doctor's fee. -- Metzner, J.
9-11-73	McCLUSKEY-Filed memo entered on defts motion for an order providing names of witnesses: As the Court orally held on 9-6-73, this motion is denied. - So ordered. - Metzner, J. (m/n)
9-13-73	McCLUSKEY- Filed memo entered on defendants motion for an order directing Govt. to turn over to the defense only after the witness has been identified, copies of all indictments now pending, etc.: This motion is denied. The Govt. has already been directed to turn over certain information in the areas covered by this motion in the orders of Aug. 6-71. It shall furnish similar information to this defendant. So ordered. - Metzner, J. (m/n)
9-19-73	McCLUSKEY-Filed memo entered on defendants motion for an order providing the following relief: Requiring Govt. pre-trial to set forth certain names, etc.: This motion is denied - So ordered. - Metzner, J. (m/n) 

DATE	PROCEEDINGS
Sep-6-73	Robert Rippy- Filed Governments affdvt. for a W/H/C - writ ret. 9-11-73
Sep-25-73	Robert I. Rippy- Filed original C.J.A. copy #1 to the A.C. Washington, D.C. for payment -- Nettner, J.
Sep-25-73	Irving Aronick- Filed original C.J.A. copy #1 to the A.C. Washington, D.C. for payment -- Nettner, J.
Oct. 29-73	RIPPY--Filed W/H/C--Writ satisfied on Sept. 17, 1973. Duffy, J.
Dec-27-73	Filed Governments request to charge.
Dec-27-73	CARROLL- Filed defendants request to charge.
Jan -8-74	McCloskey- Filed remand dated 6-25-73
1-15-74	Filed transcript of record of proceedings, dated 8-3-73
1-15-74	Filed transcript of record of proceedings, dated 8-3-73
1-15-74	CRAWFORD - Filed transcript of record of proceedings, dated 6/20/73
Jan. 22-74	CARROLL - Filed Remand with Marshal's return dated 6/25/73
Jan. 22-74	MYERS - Filed Remand with Marshal's return dated 6/25/73
Jan. 22-74	MAH - Filed Remand with Marshal's return dated 6/25/73
Jan. 22-74	CRAWFORD - Filed Remand with Marshal's return dated 6/20/73
Jan. 29-74	RIPPY - Filed CJA 21 Authorization to John E. McNally, Investigator Copy 1 mailed to Wash. D. C.

A TRUE COPY

REYNOLD F. BARNHART

*[Signature]*  
 Clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

CASE NO. 73 CR 335

JUDGE: METZNER

v.

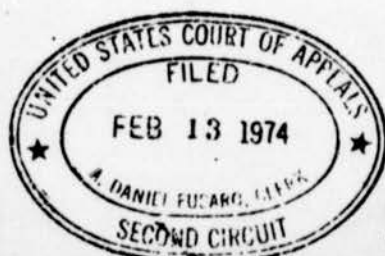
CLERK'S CERTIFICATE

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a  
"JACK", VINCENT MCGLOREY, a/k/a "MIKE",  
ROBERT M. PIPY, a/k/a "BIRD", CHESTER  
CRAWFORD, PAUL CRAWFORD, THURANCE LEVEY  
MYLES and GEOFFREY MATTHEW MANN,

Defendants

I, RAYMOND V. BURGHART, Clerk of the District Court of the  
United States for the Southern District of New York, do hereby certify  
that the certified copy of docket entries in 73 CR 335, lettered A - H,  
in 73 CR 333, lettered I - J, in 73 CR 306, lettered K - O and in 73 CR  
372, lettered P - R, and the original filed as was numbered 1 thru 116  
inclusive constitute the record on appeal in the above entitled proceeding;  
except for the following missing documents:

DATE FILED	73 CR 335	DESCRIPTION
9/11/73		Original indictment
10/16/73		Sealed envelope containing papers submitted by Government sealed pursuant to order of Judge Metzner dated 10/16/73
11/2/73		Sealed envelope filed in accordance with order of Judge Metzner dated 11/7/73
12/11/73		Letter from Judge Metzner dated 11/23/73 to Jay Goldberg transmitting report from Springfield re examination of V. McCloskey
12/22/73		Motion by left. Carroll with Memo of Court endorsed relating to original indictment
1/3/74		Multiple motions - accompanying Notice of Motion and supporting papers and exhibits and opinion of Judge Metzner No. 40149
1/3/74		Brown - Marshall's return 10/4/73
1/17/74		Order dated 9/13/73 with Marshall's return relating to defendant McCloskey
2/4/74		C.J.A. 29 for payment Robert Mitchell for witness Mann
2/5/74		Opinion Judge Metzner No. 40149 dated 12/22/73 re Def. McCloskey's attorneys letters
		Consent to change attorney - W. McCloskey
		Memo endorsed on letter 2/1/74 by Judge Metzner re reduction of sentence Mann
		Transcript of Proceedings 6/18/73
		Transcript of Proceedings 6/19/73
		Transcript of Proceedings 6/20/73
		Transcript of Proceedings 6/25/73
		Transcript of Proceedings 9/5/73





6/29/73

Motion papers deft. V. McCloskey for reduction of bail

73 - CR - 606

7/19/73

Sealed envelope - deft. Carroll

7/24/73

Carroll - Memo Order denying application for reduction of bail Judge Letzner

8/8/73

Affidavit of Government sealed by Order of Judge Letzner

8/29/73

Government Bill of Particulars

73 - CR - 972

11/14/73

Complaint under which defendant William McCloskey arrested

11/21/73

Affidavit in support of motion to join indict-  
ments for purpose of trial

12/11/73

Consent order re bail

12/11/73

Government Bill of Particulars

12/14/73

Order compelling Chester Crawford to testify

12/17/73

Order compelling Paul Crawford to testify

12/18/73

Order compelling Geoffrey Dean to testify

12/19/73

Order compelling Terrence Myers to testify

12/21/73

Government Bill of Particulars

12/26/73

Order compelling John Turner to testify

1/24/74

Government affidavit in opposition to defendant  
V. McCloskey's motion to adjourn trial, etc.  
C.J.A. 29 Johnson - copy 2 approving payment

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this **13TH** day of **FEBRUARY**, in the year of our Lord, One thousand nine hundred and seventy four, and of the Independence of the United States the **198TH** year.

*Raymond F. Baylson*  
Clerk of the Court

CASE NO. 73 CR 855  
 73 CR 583  
 73 CR 606  
 73 CR 972

GOVERNMENT EXHIBITS IN EVIDENCE ON TRIAL

Exhibit No.

3A	Employment record William Hickey
5	Medical Examiner's report William Hickey
8	Motel registration card
9	Motel Registration card
10	Motel Registration card
11	Motel registration card
12	Motel registration card
15	Motel registration card
16	Motel registration card
17	Motel registration card
18	Corporate resolution for Meadowlands Bank
19	Corporation signature card
20	Photostatic copies of 3 checks - front and back
21	Bank resolution Plaza National Bank
22	Signature Card National Bank of Secaucus
23	Photostatic copy of cancelled check for cash - front and back
24	Bank statement Plaza National Bank
25	Telephone list Maria Valquez
27	Telephone toll charges calling No. 276-6220
28	Telephone toll charges calling No. 201-863-3347
29A	Telephone toll charges calling No. 201-863-3347
29B	Telephone toll charges calling No. 201-863-3347
29C	Telephone toll charges calling No. 201-863-3347
30	Police Blotter Entry Stop Van
31	Telephone tolls - calling No. 202-829-7057
32	Car rental records Eileen Holder
33	Jim's Auto Body Service
34	Palisade Towing Corp.
35	Records from General Post Office and Federal Reserve bank re registered mail
36	Items of registered mail
37	List of Registered Mail from Brokers and processing service
38	List of Registered Mail
39	List of Registered Mail
40	List of Registered Mail
41	List of Registered Mail

DEFENDANTS' EXHIBITS IN EVIDENCE ON TRIAL

A	Original and copy of U.S. Attorneys letter re Chester Crawford
D	U.S. Attorneys letter re Myers plea
E	Photograph of Beckman and William Street vicinity
E-1	Photograph of Beckman and William Street vicinity
E-2	Photograph of Beckman and William Street vicinity
E-3	Photograph of Beckman and William Street vicinity
E-5	Photograph of Beckman and William Street vicinity
E-7	Photograph of Beckman and William Street vicinity
F	Gun Flyer
H	Recognizance New Jersey Court witness Mann
I	Arrest record Geoffrey Mann
J	U.S. Attorney letter re Mann plea

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

U.S.C.A. NO. 74-1138

-----  
USA  
-Vs-  
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THOMAS JOSEPH CARROLL, et al

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF  
NEW YORK

CASE NO. 73 Cr. 855

JUDGE Metzner

-----  
1st Supplemental Record.

INDEX TO THE SUPPLEMENTAL RECORD ON APPEAL

DOCUMENTS

Certified extract of docket entries

(73 Cr. 589)

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(73 Cr. 606)

Transcript of proceedings dated June 25, 73

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" " " " June 20, 73

119

" " " " Sept. 5, 73

120

(73 Cr. 855)

Transcript of proceedings dated Aug 6, 73

121

" " " " Sept 12, 73

122

" " " " Dec. 4, 73

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" " " " Dec 8, 73

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" " " " Sept 17, 73

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" " " " Nov. 7, 73

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" " " " Nov 13, 73

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" " " " Nov 19, 20, 27, 73

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" " " " Dec 3, 73

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" " " " Jan 25, 74

130

Clerk's Certificate

131



74-1138, 74-1117  
Supp.

.....X  
XMSM  
USA  
-Vs-

THOMAS JOSEPH CARROLL, et al

CASE NO. 73 Cr. 855  
CMM

.....X  
EXTRACT OF DOCKET ENTRIES

Filed In Case # 73 Cr. 583

Jan 15, 74 Filed Transcript of proceedings dated June 19, 1973.

Filed in Case #73 Cr. 606

Jan 10, 74 Filed Transcript of proceedings dated June 25, 73

Jan. 15, 74 Filed Transcript of proceedings dated June 20, 73

Jan 10, 74 Filed Transcript of proceedings dated Sept. 5, 73

Filed in Case #73 Cr. 855

Jan 10, 74 Filed Transcript of proceedings dated Aug. 6, 73

Jan 10, 74 Filed Transcript of Proceedings dated Sept. 12, 73

Jan 10, 74 Filed " " " " Dec 4, 73

Jan 10, 74 Filed " " " " Dec 8, 73

Feb 14, 74 Filed " " " " Sept 17, 73

Feb 14, 74 Filed " " " " Nov 7, 73

Feb 14, 74 Filed " " " " Nov. 13, 73

Feb. 14, 74 Filed " " " " Nov. 19, 20, 27,

Feb 2x 14, 74 Filed " " " " Dec. 3, 1973

Feb 14, 74 Filed " " " " Jan 25, 1974



A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk

By [Signature]  
Deputy Clerk

74-1-5-73-74-111  
H. J. [Signature]

-----  
USA  
-VS-

THOMAS JOSEPH CARROLL, et al

CASE NO. 73 Cr. 855

JUDGE Metzner

SUPPLEMENTAL CLERK'S  
CERTIFICATE.

-----  
I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified extract of docket entries lettered S, and the original filed papers numbered 117 thru 131, inclusive, constitute the supplemental record on appeal in the above entitled proceeding.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 15 day of Feb, in the year of our Lord, one thousand nine hundred and seventy four, and the Independence of the United States the 198th year.

Raymond F. Burghardt  
Clerk of the Court.





UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

U.S.C.A. NO. 74-1138

U.S.A.

-v-

THOMAS J. CARROLL, et al.

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF  
NEW YORK

CASE NO. 73 cr. 855

JUDGE METZNER

2nd Supplemental Record.

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Certified extract of docket entries

Transcript of record of proceedings dtd: Jan. 8-74.

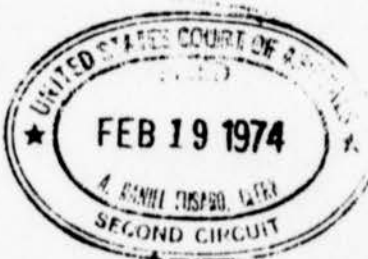
Clerk's Certificate.

DOCUMENTS

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132.

133.



74-1138-39, 74-1197

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 74-1138

-----  
U.S.A.

CASE NO. 73 cr. 855

-v-  
THOMAS J. CARROLL, et al.

JUDGE MEITZNER

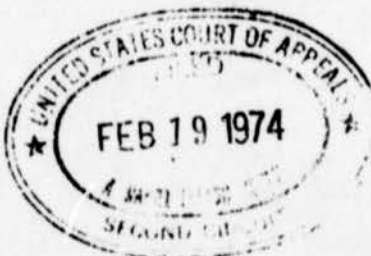
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EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

FEBRUARY 19-74.

Transcript of record of proceedings dtd: 1-8-74



A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk

By M. Garmish  
Deputy Clerk

74-1138-31, 74-1197



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

31a

U.S.A.

-v-

THOMAS J. CARROLL, et al.

CASE NO. 73 cr. 855

JUDGE METZNER

SUPPLEMENTAL CLERK'S  
CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified extract of docket entries lettered T, and the original filed papers numbered 132 thru 133, inclusive, constitute the supplemental record on appeal in the above entitled proceeding.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 19th day of FEBRUARY, in the year of our Lord, one thousand nine hundred and seventy FOUR, and the Independence of the United States the 198th year.

*Raymond F. Burghardt*  
Clerk of the Court.



**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**U.S.C.A. NO. 74-1138**

-----x  
**UNITED STATES OF AMERICA**

**U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF  
NEW YORK**

**v.**

**THOMAS JOSEPH CARROLL, et al**

**73 CR 855**  
**CASE 73 CR 583**  
**NO: 73 CR 606**  
**73 CR 972**

-----x **JUDGE METZNER**

**Third Supplemental Record.**

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*74-1138*

*217*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 74-1138

-----  
USA

-vs

THOMAS JOSEPH CARROLL, et al

CASE NO. 73 Cr. 855

JUDGE Metzner

-----  
EXTRACT OF DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
June 14, 73	Filed in 73 Cr. <del>583</del> 583 Indictment
June 19, 73	Filed in 73 Cr. 606 Indictment
Feb 20, 1974	Transcript of proceedings dated Jan 8, 74 Filed 73 Cr. 855
Sept 11, 73	Indictment
Feb 20, 1974	Stipulation designating documents & exhibit to be transmitted to USCA- So Ordered Judge Metzner.

A TRUE COPY  
RAYMOND F. BURGHARDT, Clerk

*Raymond F. Burghardt*  
Deputy Clerk

W

USCA  
74-1138 34a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

73 CR 855

73 CR 583

73 CR 606

73 CR 972

UNITED STATES OF AMERICA

CASE NO. \_\_\_\_\_

JUDGE METZNER

v.

THOMAS JOSEPH CARROLL, et al.

SUPPLEMENTAL CLERK'S  
CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified extract of docket entries lettered U, and the original + 627 Ex. #2 filed papers numbered 134 thru 146, inclusive, constitute the <sup>3rd</sup> supplemental record on appeal in the above entitled proceeding.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 21st day of February, in the year of our Lord, one thousand nine hundred and seventy four, and the Independence of the United States the 19th year.

Raymond F. Burghardt  
Clerk of the Court



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

73 CRIM. 855

- v -

INDICTMENT

THOMAS JOSEPH CARROLL, JOHN  
TURNER, a/k/a "Jack", VINCENT  
MC CLUSKEY, a/k/a "Mike",  
ROBERT E. RIPPY, a/k/a "Ripp",  
CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and  
GEOFFREY MATTHEWS MANN,

(12/10/73 amended to 73 Cr. McCuskey)

Defendants.



The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this Indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN TURNER, a/k/a "Jack", VINCENT MC CLUSKEY, a/k/a "Mike", ROBERT E. RIPPY, a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114, Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, to wit, from a United States mail truck in violation of Section 1708, Title 18, United States Code.

2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and

1



other property of the United States, would and did put in jeopardy the lives of the said persons by the use of dangerous weapons.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and TERRENCE DEWEY MYERS went to the vicinity of Wall Street, New York, New York.
2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT MC CLUSKEY, a/k/a "Mike", in the vicinity of Fulton Street, New York, New York.
3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN TURNER, a/k/a "Jack", VINCENT MC CLUSKEY, a/k/a "Mike", CHESTER CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, met at Katz's Delicatessen, Houston Street, New York, New York.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN TURNER, a/k/a "Jack", VINCENT MC CLUSKEY, a/k/a "Mike", ROBERT E. RIPPY, a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants unlawfully, wilfully, knowingly, with malice

aforethought and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111,  
1114 and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JOSEPH CARROLL, JOHN TURNER, a/k/a "Jack", VINCENT MC CLUSKEY, a/k/a "Mike", ROBERT E. RIPPY, a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, unlawfully, wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

Paul J. Curran  
FOREMAN

PAUL J. CURRAN  
United States Attorney

A TRUE COPY  
RAYMOND F. BURCHARDT, Clerk

By Raymond F. Burchardt  
Deputy Clerk

The defendant Thomas Joseph Carroll & 38a  
by the U.S. & present,  
is sentenced to life in prison on count  
(2). Twenty Five (25) years on count (3)  
and Five years on count (1). Sentences  
on counts (1) and (3) to run concurrently  
with each other and concurrently with  
sentence imposed on count (2).  
The defendant is advised of his right  
to appeal. Defendant is remanded  
to the Federal Detention Headquarters  
457 West St, New York, N.Y. pending appeal  
Witzner, J.C.

JAN 25 1974

The defendant Vincent McCloskey  
with his atty and the U.S. & present is  
sentenced to life in prison on count (2).  
Twenty Five (25) years on count (3) and  
Five years on count (1).  
Sentences on counts (1) and (3) to run concurrently  
with each other and concurrently with sentence  
imposed on count (2).  
The defendant is advised of his right to appeal.  
Defendant is remanded to the Federal Detention  
Headquarters @ 457 West St, N.Y. pending  
appeal.  
Witzner, J.C.

Dec. 26, 1973

39a

REPORT: METZNER, J.

U.S.D.

VS  
CARROLL ET AL  
73 CR 855

DEFT. THOMAS JUDITH CARROLL - GUILTY ON COUNTS (1-2 AND 3)  
PRESENTENCE REPORT ORDERED.

SENTENCE JAN 25, 1974

ALL MOTIONS RESERVED FOR DAY OF SENTENCE, ALL PAPERS  
FILED BY JAN 23, 1974.

DEFT. REMANDED

DEFT. VINCENT McCLOSKEY - GUILTY ON COUNTS (1-2 AND 3)  
PRESENTENCE REPORT ORDERED

SENTENCE JAN 25, 1974

ALL MOTIONS RESERVED FOR DAY OF SENTENCE, ALL PAPERS  
FILED BY JAN 23, 1974.

DEFT. REMANDED

V. McCloskey. Guilty on cts. 1-2-3 (see entry on 73 CR 972)

DEFT. ROBERT E. RIPPY - NOT GUILTY -  
WRIT SATISFIED.

JS

NOTE:

See attached rider for sentences.



JAN 8 1974

Continued sentencing.

The defendant Jerome D. Myer with  
his atty and the U.S.A. present is sentenced  
to Twenty five (25) years in prison on count (2).  
Counts (1) and (3) are dismissed.

The court recommends incarceration ~~elsewhere~~ ~~in~~  
Wash., D.C. ~~in~~.

Defendant Remanded.

W. J. J.

Kidney

See entering.

The defendant John Brown with his atty  
and the U.S. & A. present, is sentenced to fine (\$)  
years or court (1) and fine (10) years or court (2)  
court (1) is to run concurrently with court (2).  
court (2) is dismissed.  
Defendant is committed.

Metzner.

The defendant Paul Chapin with his atty  
and the U.S. & A. present, is sentenced to fine and a  
month (2 1/2) years or court (1) or prison  
court (1) and (2) are dismissed.

The best recommended incarceration ~~close to~~  
A.C. ~~Washington~~  
Defendant is committed.

Metzner.

The defendant Jeffrey M. Moore with his  
atty and the U.S. & A. present is sentenced to  
fine (35) years or prison or court (2).  
court (1) and (3) are dismissed.

The best recommended incarceration ~~close to~~ ~~U.S. & A.~~  
Defendant is committed.

Metzner.

DEC 11 1973 Trial continued. Dft. Rippy produced  
in Court on a writ. *Wetzel*

DEC 12 1973 Trial continued. Dft. Rippy produced  
in Court on a writ.

DEC 13 1973

Trial continued. Dft. Rippy produced in  
Court on a writ. *Wetzel*

DEC 14 1973

Trial continued. Dft. Rippy produced  
in Court on a writ. *Wetzel*

DEC 17 1973

Trial continued. Dft. Rippy produced  
in Court on a writ. *Wetzel*

DEC 18 1973

Trial continued. *Wetzel*

DEC 19 1973

Trial continued. *Wetzel*

DEC 20 1973

Trial continued. *Wetzel*  
Motion to dismiss count (1) as to dft. Rippy  
granted. *Wetzel*

DEC 24 1973

— *Wetzel*

DEC 26 1973 Trial continued. Court charge — *Wetzel*

sworn — jury returns.

Trial continued. Ray Rippy

(R. R.) (see document 1000)

SEP 21 1973

The defendant John Suras with his atty  
and the U.S. Atty present, withdrew his  
plea of not guilty and pleads guilty to  
count one (1) that to count three (3) to a  
less included offense assault and battery  
(1st degree).

Plea accepted

Bail conditions continued as set in 73 cr. 606

W. J. Metzger

DEC 10 1973

Defendant McCloskey with his atty and  
the U.S. Atty present pleads not guilty. Plea  
accepted. Bail conditions as set in 73 cr. 606  
are continued.

W. J. Metzger

DEC 10 1973

Motion by the Govt to amend the name  
of Vincent McCloskey in this indictment to  
Vincent McCloskey - no opposition -  
Motion granted

Jury empanelled and sworn with (4)  
alternate jurors. Trial begun as to  
Thomas J. Carroll - Vincent McCloskey -  
Robert E. Rippy, and William McCloskey  
from indictment # 73 cr. 972.

Indictment # 73 cr. 855 and # 73 cr. 972  
are consolidated for trial. Dist Rippy produced  
in court on a writ.

W. J. Metzger



defendant Paul E. Ford with his atty and the A.U.S.A. who  
present pleads Guilty to count C. Plea accepted. Bail  
conditions as set in 73 or 66 are continued.

The defendant Jeffrey M. Mann with his atty and the  
A.U.S.A. present pleads Guilty to a lesser included  
crime - murder 2nd degree. Plea accepted. Bail  
conditions as set in 73 or 66 are continued.

The defendant Lawrence D. Meyers with his atty and  
the A.U.S.A. present pleads Guilty to a lesser included  
crime - murder 2nd degree. Plea accepted. Bail  
conditions as set in 73 or 66 are continued.

<sup>Arrest</sup>  
The defendant McCluskey with his atty and the A.U.S.A.  
arrest is committed by order of the Court to Springfield  
C. pursuant to 28 U.S.C. Section 4246.

defendant Joseph E. Bepko with his atty and  
A.U.S.A. present having pled not guilty. Bail  
set.

defendant Thomas J. Carroll with his atty and the A.U.S.A.  
pleads not guilty. Plea accepted. Bail conditions  
set in 73 or 66 are continued.

J.

73 CRIM 855

JUDGE METZNER

450

United States District Court

Southern District of New York

THE UNITED STATES OF AMERICA

vs.

THOMAS JOSEPH CARROLL, et al.,

Defendants.

SEP 12 1973

*The defendant Victor & Ruppert with his  
att and the G.U.S.A. found guilty not guilty  
~~of the same~~ but acquitted 9-17-73  
Hearing as to defendant Ruppert held. Michael  
dismissed.*

*J. Metzner*

INDICTMENT

73 Cr.

(in violation of 18 U.S.C. 371,  
1111, 1114, 2114, and 2.)

SEP 17 1973

*The defendant John James with his atty and  
the G.U.S.A. found guilty not guilty and is  
excused from trial. For further information.*

PAUL J. CURRAN

United States Attorney

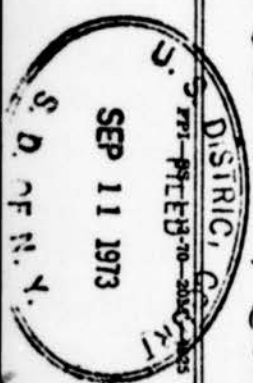
A TRUE BILL

*Madame M. Becker*

DISTRICT CLERK

Foreman

SEP 11 1973



Order

46a



United States v. Carroll, et al.,  
73 Cr. 855

Defendant Vincent McCluskey, by affidavit submitted to this court on September 6, 1973, indicated that there was a question regarding his competency to stand trial.

The court on that date signed an order directing that the movant be examined by Dr. David Abrahamsen pursuant to the procedures set forth in 18 U.S.C. § 4244. Subsequently, on September 12, 1973, movant requested permission that he also be examined by Dr. Stanley Portnow at his own expense.

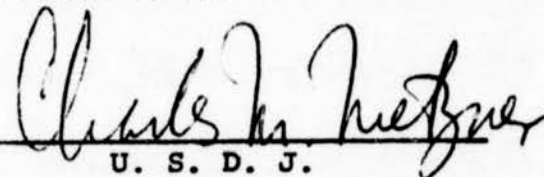
The case was called for trial this morning, at which time the reports of both doctors were submitted to the court. After reading those reports, and upon the request by the attorney for the defendant that further examination be made of his client, the court refused to accept any plea at this time to the superseding indictment.

In lieu of holding a hearing at this time, the movant is committed to the custody of the Attorney General for further study and report as to the mental

competency of the defendant to stand trial.

So ordered.

Dated: September 17, 1973

  
U. S. D. J.



73 Cr. 855

DAVID ABRAHAMSEN, M. D.  
1035 FIFTH AVENUE  
NEW YORK, N. Y. 10028

September 12, 1973



The Honorable Charles M. Metzner  
United States District Judge  
United States District Court  
Southern District of New York  
United States Court House  
Foley Square  
New York, N. Y. 10007

Re: United States of America  
v. -  
Thomas Joseph Carroll, et al.,  
(Vincent McCluskey a/k/a "Mike.")  
73 Cr. 606

My dear Judge Metzner:

This is a psychiatric-psychological report on Vincent Mc Cluskey whom I examined at the Detention Headquarters on West Street on September 11, 1973.

The defendant is 39 years old. Throughout the interview he was placid and answered only a few questions. He said that he was born in Tallahassee and that his parents were dead. It took a long time for him to answer any question. He was hesitant and the examiner noticed that his eyes were attentive.

I asked him about his schooling -- no answer; I asked him about his early childhood -- no answer; I asked him about the present charge -- no answer; I asked him how old are his children -- no answer.

#### PSYCHIATRIC IMPRESSION

When the defendant sat down, I noticed that Mr. Mc Cluskey's right hand and arm were shaking, but as the interview proceeded, the tremor lessened, so that after five or ten minutes there was no tremor at all. It is noteworthy that the tremor disappeared when, for instance, he put on his shoe and stocking.

#### NEUROLOGICAL EXAMINATION

The defendant showed little power in both hands and arms, and the same was true of his lower extremities. For instance, when I asked him to bend his knees against my hands, he could not do it, nor could he stretch out his knees. Finger-nose and other neurological tests were carried out poorly. Deep tendon reflexes were increased. The Babinski reflexes, which if positive indicates an organic lesion, were absent.

B

Throughout the interview the defendant showed little, if any, spontaneity, and while he either could not or did not want to answer my questions, he picked up a pack of cigarettes and unable to find his matches, asked me spontaneously, "Can I have a match?"

When he saw a piece of cake on the table, he said, "I like cake. I like pumpkin pie."

CONCLUSION

The examiner receives the impression that the defendant tries to behave in a silly manner in order to indicate that he is very ill mentally. The symptoms he presents are inconsistent with any psychotic condition. His fabrications, his inability to understand or to answer questions, are crude and primitive.

DIAGNOSIS

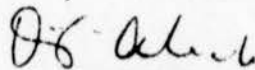
Malingering. Psychopathic Personality.

Conclusion

At the time of the defendant's alleged crime, he had the mental capacity to appreciate the wrongfulness of his conduct and to conform his behavior to the requirements of law.

The defendant is able to understand the nature of the Court proceedings against him and to assist in his own defense. He is able to stand trial.

Sincerely yours,



David Abrahamsen, M.D.  
Qualified Psychiatrist

DA/ljk

cc: John Kenny, Esq.  
Assistant United States Attorney

9/17/73. The defendant was reexamined today at Foley Square in the detention pen. The findings today confirm my original diagnosis. Malingering. Psychopathic Personality. Conclusion, the same.

David Abrahamsen

STANLEY L. PORTNOW, M. D.  
823 PARK AVENUE  
NEW YORK, N. Y. 10021

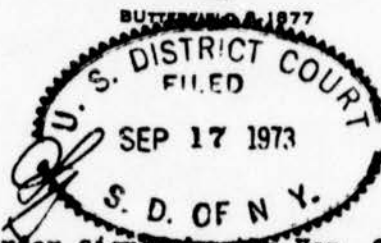
September 14, 1973

Jay Goldberg, Esq.  
299 Broadway  
New York, New York

RE: U.S.A. v. Vincent McCloskey,  
et al

73CR606

Dear Mr. Goldberg:



Per your request and a court order signed by the Hon. Charles M. Metzner, I examined Mr. Vincent McCloskey at the Federal House of Detention for Men, 427 West Street, New York City on September 14, 1973 from 10:15 AM until 11:50 AM. In addition to the clinical examination, I read the indictment and papers attached thereto which you provided me.

**HISTORY:** It was impossible to meaningfully communicate with the patient at any time during the examination. He would not tell me where or when he was born, but just stared into space. No meaningful biographical material could be elicited. When asked the names of his wife and children he did not respond, but when I asked their address he did say, "New York, New Jersey."

**PSYCHIATRIC STATUS:** Mr. McCloskey did not lend the examination his full cooperation. His responses were erratic and bizarre and it was my feeling that he chose at will those questions he wished to answer and those he did not. In place of answering, he would stare into space as if he could not hear. He was very tremulous and anxious and I do not doubt that there is an underlying depression. When I asked whether he heard voices he was quick to respond, "Yes." However, when I asked what they said he replied, "It's a secret." He claims that he has night dreams, but that they, too, are "secret." He was unkempt and unshaven. When asked who the President of the United States was he would not respond, but he did know that ten plus ten equals twenty. When asked what he was charged with he did not respond, but stared into space.

**CONCLUSIONS:** This is a very difficult clinical condition to evaluate in a single interview. It would appear from his physical appearance and demeanor that Mr. McCloskey was experiencing a psychosis of sorts. With the exception of his affirmative answer to my question about auditory hallucinations, however, there was no evidence that he is suffering from a psychosis. His extreme anxiety and remoteness might promote consideration of a catatonic episode, but he was not sweaty and his eye blink reflexes were normal. Hysterical dissociation would be ruled out by the uneven memory lacunae. Perhaps the single most bona fide clinical impression is that this man is anxious, worried and depressed and it is my feeling that the further clinical symptomatology elaborated above is an exaggeration of the depressive condition. I conversed with the staff at the Federal House of Detention for Men and learned that Mr. McCloskey had in fact become more and more seclusive and isolated during the previous weeks. If this is so, then he should be further observed for more signs of mental illness.

In conclusion, it is my professional opinion that Mr. McCloskey is suffering from a depressive and anxiety reaction which may be getting worse. At the present time, however, his symptoms fit no known psychiatric syndrome and must be considered to be exaggerated. The extent of this exaggeration could only be detected by prolonged observation in a hospital setting and sophisticated techniques, such as sodium amytal interviews. It would be premature and unwarranted to presume that this is purely the product of a malingerer since there are indications that his depression and anxiety reaction are becoming more severe. A definitive evaluation of his competency to stand trial can not be made on the basis of this single interview.

Diplomate, American Board of Psychiatry  
and Neurology  
Chairman, American Psychiatric Association  
Committee on Psychiatry and the Law

Very truly yours,

*Stanley L. Portnow*  
Stanley L. Portnow, M.D., F.A.P.A.



# APPOINTMENT

51a

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF Mumma

FOR  
AT

LOCATION NUMBER

PROCEEDING (describe briefly)

CHARGE/OFFENSE (describe if applicable & check box +)

☐ Felony  
☐ Misdemeanor

U.S. or other code citation

PERSON REPRESENTED (Show full name & status, & check box +)

Name already appears as ☐ PI or as ☐ DI above

## COURT ORDER

- ☐ APPOINTING COUNSEL  
☐ RATIFYING PRIOR SERVICE  
☐ EXTENDING APPOINTMENT FOR APPEAL  
☐ SUBSTITUTING COUNSEL FOR:  
(name of prior counsel) (date appt'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate

Date 7/24/73

OR BY ORDER  
OF THE COURT

(Clerk or Deputy)

- ☐ Defendant - Adult  
☐ Defendant - Juvenile  
☐ Appellant  
☐ Probation Violator  
☐ Parole Violator  
☐ Habeas Petitioner  
☐ 2285 Petitioner  
☐ Material Witness  
☐ Other (Specify below)

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

EXPENSES & EXPENSES ATTORNEYS ATTORNEYS

TIME SPENT	DATES	HOURS	AMOUNT
<b>I. IN OPEN COURT</b>			
A. ARRAIGNMENT &/OR PLEA			RATE PER HOUR
B. MOTIONS & REQUESTS			
C. RAIL HEARINGS			
D. SENTENCE HEARINGS			
E. RE-ENTRY HEARINGS			
F. APPEALS COURT			
G. OTHER (Specify)			
TOTAL "IN COURT" HOURS			
<b>II. OUT OF COURT</b>			
A. INTERVIEW & CONFERENCE			
B. OBTAINING RECORDS			
C. LEGAL RESEARCH			
D. INVESTIGATIVE (OTHER WORK) (Specify)			
TOTAL "OUT OF COURT" HOURS			
TOTAL COMPENSATION FOR "IN COURT & OUT OF COURT" TIME			

ITEMIZED EXPENSES (Specify, per instruction sheet)

AMT. PER ITEM

TOTAL ITEMIZED EXPENSES

TOTAL COMPENSATION & EXPENSES

PREVIOUSLY PAID BY APPLICANT

NET AMOUNT CLAIMED

AMOUNT CLAIMED

APPROVED

COUNSEL ☐ IS A PRIVATE ATTORNEY  
☐ IS FURNISHED BY ☐ COMMUNITY DEFENDER ORGANIZATION  
☐ BAR ASSOCIATION OR LEGAL AID AGENCY

VOUCHER NUMBER 67312

ATTORNEY ORGANIZATION

ADDRESS

ZIP CODE

AT TIME OF APPOINTMENT  
PLEASE TYPE OR  
PRINT CLEARLY THE NAME OF  
ATTORNEY OR ORGANIZATION  
(PAYEE) AND THE ADDRESS TO  
WHICH CHECK SHOULD  
BE MAILED

Copy 5 - Filed in court clerk's office as soon as appointment made

5



## AUTHORIZATION

IN UNITED STATES ☐ MAGISTRATE ☒ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF

U.S.

vs. **Thomas Carroll**  
et al.

FOR

**Southern District of N.Y.**  
AT **Foley Square**

LOCATION NUMBER

38301

PROCEEDING (describe briefly)

**Proceedings of 9/17/73 relating to taking of  
plea of co-defendants. Questions and  
answers relating thereto.**

- ☒ Defendant - Adult  
☐ Defendant - Juvenile  
☐ Appellant  
☐ Probation Violator  
☐ Parole Violator  
☐ Habeas Petitioner  
☐ 2255 Petitioner  
☐ Material Witness  
☐ Other (Specify below)

DOCKET NUMBERS

Magistrate

District Court

**73 OF 855**  
Court of Appeals

PERSON REPRESENTED (show full name &amp; status, &amp; check box -)

**Robert Rippy**Name already appears as ☐ PI or as ☒ Of above

## ATTORNEY'S STATEMENT

As the attorney for the "person represented" who is named above, I hereby affirm that: (1) the services or expenditures described in the section to the right are necessary to an adequate legal representation or defense in this case, and (2) the "person represented" affirms that he or she is unable to pay for the cost of these services; I therefore request authorization to obtain or incur them at the cost of the United States.

ATTORNEY'S SIGNATURE \_\_\_\_\_ Date \_\_\_\_\_

SUCH SERVICES TO BE PROVIDED BY

NAME **Court Reporters**

TITLE OR ORGANIZATION:

TELEPHONE NO: **267-4900**

## COURT ORDER

Financial inability of the "person represented" has been established to the court's satisfaction and authorization requested above is hereby granted.

Signature of judge or magistrate \_\_\_\_\_ Date \_\_\_\_\_

## SPECIAL AUTHORIZATIONS

APPORTION % TRANSCRIPT COST Judge's Initials  
 WITH  
 FINDINGS (e.g. pauperism, non-frivolousness, substantial question). IF REQUIRED BY 28 U.S.C. 753 HAVE BEEN ESTABLISHED  
 DAILY TRANSCRIPT APPROVED

## CERTIFICATIONS OF ATTORNEY

- ☐ TRANSCRIPT WAS RECEIVED  
☐ I RECOMMEND PAYMENT TO CONTRACTOR OF AMOUNT CLAIMED  
☐ PAY ME BECAUSE, AS COPY OF MY ATTACHED CHECK OR RECEIPT SHOWS, I PAID FOR TRANSCRIPT

If transcript requested, of what proceeding

**9/17/73**

Kind of expert, if "other"

Check category (white box) above and briefly describe below the service or expense and justifying reason for request. Reason may be in separate statement sealed by court.

ESTIMATED TRANSCRIPT COST	ORIG	COPIES	No. Pages	Per Pg.	Extension	Deduct Amt. Apportioned	FOR TRANSCRIPT
			<b>60</b>	<b>1.20</b>			<b>66.00</b>

\*Excludes free copy for clerk of court

## VOUCHER

ACTUAL TRANSCRIPT COST	ORIG	COPIES	No. Pages	Per Pg.	Extension	Deduct Amt. Apportioned	FOR TRANSCRIPT

I swear and affirm the correctness of above statements

SIGNATURE OF CONTRACTOR/PAYEE \_\_\_\_\_ Date \_\_\_\_\_

SIGNATURE OF ATTORNEY or Clerk of Court \_\_\_\_\_ Date \_\_\_\_\_

AMOUNT CERTIFIED/ APPROVED

APPROVED FOR PAYMENT

SIGNATURE OF JUDGE/MAGISTRATE \_\_\_\_\_

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS \_\_\_\_\_

Payment in excess of statutory limitation approved under 18 USC 3605(b)(1)

AMT. APPROVED

# USE ADDITIONAL BLANK SHEETS IF MORE SPACE IS NEEDED

VOUCHER NUMBER

48054

PERSON OR ORGANIZATION

**Fin- 13-5405790**

**Southern District Court Reporters**  
**U.S. Court House**  
**Foley Square**  
**New York, N.Y.** ZIP CODE **10007**

ADDRESS

AT THE TIME OF AUTHORIZATION PLEASE TYPE OR PRINT CLEARLY THE NAME OF PERSON OR ORGANIZATION PROVIDING SERVICE (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- x  
UNITED STATES OF AMERICA :

-v- :

THOMAS JOSEPH CARROLL, JOHN TURNER,  
a/k/a "JACK", VINCENT MC CLUSKEY,  
a/k/a "MIKE", ROBERT E. RIPPY,  
a/k/a "RIPP", CHESTER CRAWFORD, PAUL  
CRAWFORD, TERRENCE DEWEY MYERS and  
GEOFFREY MATTHEWS MANN,

: 73 Cr. 855

Defendants. :

----- x  
MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT RIPPY'S MOTION FOR COURT  
INSPECTION OF THE GRAND JURY MINUTES  
AND DISMISSAL OF THE INDICTMENT

This Court clearly has the power to inspect the grand jury minutes and upon such inspection, to dismiss the indictment on the ground of absence of evidence to support the charges. United States v. Foster, 80 F.S. 479 (S.D.N.Y. 1948); United States v. Perlman, 247 F. 158 (S.D.N.Y. 1917); United States v. Sutton, 79 F. 2d 863 (9th Cir. 1935).

The instant case is a most compelling one for the exercise of this discretionary power. Defendant Rippy is charged, inter alia, with murder in the first degree. If convicted, the mandatory punishment is life imprisonment. [18 U.S.C. §1111(b)]. The plea offered to him by the government - a conspiracy count

bearing a maximum penalty of five years imprisonment - is the most lenient of the pleas offered to the defendants in this case. Rippy's counsel has advised him that in his view, as a matter of law, there is insufficient evidence of his guilt. Counsel's view is predicated on the fact that conceding the government proof on the material facts - which, as noted in the annexed affirmation, Rippy does not dispute - there is no case against him. Accordingly, defendant Rippy has rejected the plea offer and determined to go to trial.

If a pre-trial judicial review of the grand jury minutes here determined that there was sufficient evidence of his guilt, defendant Rippy might well accept the government's offer. To deny the motion for the requested court inspection of the grand jury minutes in a case such as this where the motion is obviously non-routine and non-frivolous, where the material facts are not in dispute and where, as argued infra, the motion is amply grounded on decisions of the Court of Appeals for this Circuit, would force defendant Rippy into a cruel dilemma. Without such review at this stage, he either pleads guilty to a lesser charge of which, under counsel's view of the law, he is not guilty, or foregoing this offer, if counsel is in error in the applicable law, he then faces mandatory life imprisonment should he be convicted.

There is obviously no prejudice to the government in the court's exercise of its discretion to inspect the grand jury minutes here. Defendant does not seek review by himself or his counsel of the grand jury minutes. Accordingly, there is no question of violation of grand jury secrecy. The exercise of the requested judicial discretion would resolve an unnecessarily cruel dilemma for the defendant and would be fully consonant with the goal that justice be done in this case.

#### The Conspiracy Charge

Count one charges that defendant conspired to commit a robbery of a postal mail truck. It is well settled in this Circuit that there can be no conviction of conspiracy without "specific knowledge of factual circumstances conferring federal jurisdiction." United States v. Alsondo, et al., F.2d     Docket numbers 73-1297, 73-1466, 73-1467, page 4839 (2nd Cir., July 13, 1973); United States v. Crimmins, 123 F.2d 271 (2nd Cir., 1941); United States v. Gallishaw, 428 F. 2d 760 (2nd Cir., 1970); see Ingram v. United States, 360 U.S. 672 (1959). In Alsondo, the Court of Appeals for the Second Circuit reversed a conviction for conspiracy to assault federal agents because of the trial court's failure to instruct the jury that the government must prove that defendants had specific knowledge that the assault victims were federal agents. Similarly, in the leading case of United States v. Crimmins, supra,



the Court of Appeals, reviewing a conviction for conspiracy to transport stolen securities across state lines, held in an opinion by Judge Learned Hand: "There can be no conspiracy to 'cause' stolen securities 'to be transported in interstate ... commerce' unless it is understood to be part of the project that they shall cross state lines" [ibid. at 274].

In the present case, the government proof establishes that Rippy procured a person to participate in a fur robbery in New York City. His specific knowledge at the time of his entire participation with the co-conspirators was that a fur robbery was planned in New York. He had no knowledge whatsoever that a postal robbery was contemplated. He became aware of a possible postal robbery only after Myers, the person he procured, had gone to New York with Paul Crawford to participate in the fur robbery and had returned to Washington. At that time Rippy learned that a postal robbery had been discussed in New York. Rippy performed no act whatsoever from that point in furtherance of the plan that had been discussed in New York about a postal robbery and in no way indicated his assent to such plan. Indeed, Rippy was told by both Paul Crawford and Myers on their return from New York, that neither of them intended to participate in any further activity with the persons in New York.

Under the controlling precedents of this Circuit, as set forth above, since the government has no proof that

Rippy had "specific knowledge" [United States v. Alsondo, supra] of a postal robbery when he procured Myers to come to New York, the conspiracy count must be dismissed. That Rippy learned of the plan to commit a postal robbery prior to its actual commission does not establish the requisite knowledge for a conspiracy conviction. The essential point is that all of the acts upon which his joinder and participation in the conspiracy is to be determined was performed at a time prior to his acquiring that knowledge. After he acquired that knowledge, he in no way participated with the alleged co-conspirators in the postal robbery or assented to such plan. The government theory here presumably is that once Rippy procured a person to come to New York to participate in a specific robbery of which he had knowledge - a fur truck robbery - Rippy is liable in perpetuity for all robberies of whatever kind thereafter committed by any of the alleged co-conspirators provided he was given advance information that such robberies would occur. Plainly, this is an erroneous conception of the law and wholly inconsistent with the principles enunciated in the above case.

Under the applicable cases, if the postal robbery had been committed upon Myers' and Paul Crawford's first trip to New York in mid-March, clearly Rippy would lack "specific knowledge" requisite for a conviction of conspiracy to commit a postal robbery. Equally insufficient for a conspiracy charge

is the evidence that the postal robbery was committed during a second visit to New York by Myers several weeks later, after a time when Rippy had been advised that a postal robbery had been discussed during Myers' first trip to New York. Mere mention to Rippy that a postal robbery had been discussed in New York - without any participation or act by Rippy to assist that plan - does not render him a co-conspirator to the postal robbery plan.

#### The Substantive Crimes Charged in the Indictment

The government has conceded that Rippy was not present in New York at the time of the alleged crimes charged, [see government bill of particulars]. There are only two theories upon which Rippy's guilt of the substantive crimes charged can be predicated. The first is under the doctrine of Pinkerton v. United States, 328 U.S. 640 (1946) which holds that a co-conspirator is responsible for criminal acts in furtherance of the unlawful agreement. However, since the evidence of Rippy's guilt of the conspiracy charge is insufficient as a matter of law, he, therefore, cannot be held liable for criminal acts committed in furtherance of that conspiracy.

The only other basis for Rippy's culpability of the substantive charges is under the aiding and abetting statute, 18 U.S.C. §2. However, in United States v. Gallishaw, 428

F. 2d 760, 763 (2nd Cir., 1970), the court ruled that to convict for the substantive crime of aiding and abetting a bank robbery, the government must prove that at the time the defendant rendered his assistance, he knew that a bank was to be robbed.

At the time Rippy procured Myers to come to New York, he had no knowledge that a postal truck was to be robbed. As stated above, upon acquiring such knowledge, he thereafter furnished no aid or assistance whatsoever to the co-conspirators in the commission of the postal robbery. Accordingly, as a matter of law, there is insufficient evidence of his guilt of the crimes charged as an aider and abettor.

#### CONCLUSION

The Court should inspect the grand jury minutes and upon such inspection, dismiss the indictment.

Dated: New York, N.Y.  
October , 1973

Respectfully submitted,

FREDERICK P. HAFETZ  
Goldman & Hafetz  
60 East 42nd St.  
New York, N.Y. 10017  
(212) 682-8337  
Attorneys for Defendant  
Robert E. Rippy



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA :

-against- :

THOMAS JOSEPH CARROLL, et al. :  
(Vincent McCluskey) :

Defendants :

----- x

METZNER, D. J.:

# 39926

73 Cr. 855

FILED  
U.S. DISTRICT COURT  
OCT 16 2 18 PM '73  
S.D. OF N.Y.

Pursuant to the court's direction in its order

dated August 6, 1973, the government originally answered that it had no knowledge of any wiretaps of defendant McCluskey.

On September 15, 1973, the government indicated that it had recently learned that recordings of a wiretap were in existence which might contain the voice of defendant Vincent McCluskey. The government submitted to the court for "in camera" inspection the order authorizing the wiretap of a person other than the defendant, the papers on which the order was granted, and summaries of the recorded conversations.

The government was directed to submit the recordings to the court. This has been done and the court has listened to the tapes "in camera." In the meantime, defendant has been served with a notice of inventory pursuant to 18 U.S.C. § 2518(8)(d). He is thus aware of the telephone numbers and their location which were the subject of the order entered in the United States District Court for New Jersey, and the dates when telephone calls on those lines were intercepted. It appears that as of the present time no prosecutive steps have been taken as the result of those wiretaps. They were not used by the government in this district in preparing this case since the Assistant United States Attorney was not even aware of their existence until September 7. He has not even listened to the tapes up to the time of their submission to the court today.

On the assumption that the "Mike" referred to in the tapes is the defendant here, I find that the conversations have no relevance to the charges to be tried by this court. They refer to completely unconnected activities of the movant.

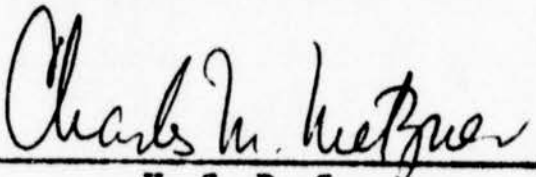
The government need not turn over these tapes to comply with the court's order for discovery, pursuant to Rule 16(a), Fed. R. Crim. P.

I also find that the order entered in the United States District Court of New Jersey was in all respects legal and proper.

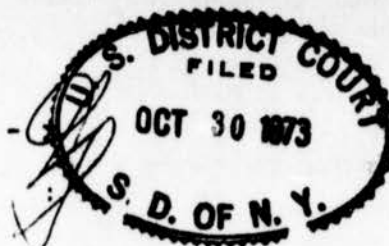
The papers submitted by the government on September 15 shall be sealed and maintained by the Clerk of this court as part of the record in this case.

So ordered.

Dated: New York, N. Y.  
October 16, 1973

  
U. S. D. J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

-v-

THOMAS JOSEPH CARROLL, JOHN TURNER,  
a/k/a "JACK", VINCENT MC CLUSKEY,  
a/k/a "MIKE", ROBERT E. RIPPY,  
a/k/a "RIPP", CHESTER CRAWFORD, PAUL  
CRAWFORD, TERRENCE DEWEY MYERS and  
GEOFFREY MATTHEWS MANN,

NOTICE OF MOTION

: 73 Cr. 855 CMM

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affirmation of Frederick P. Hafetz, Esq., dated the 25<sup>th</sup> day of October, 1973 defendant Robert E. Rippy will move this Court, at the United States Courthouse, Foley Square, New York, New York, on the 5th day of November, 1973, at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order granting court inspection of the grand jury minutes in this case and upon such inspection, dismissal of the indictment against defendant Rippy.

Dated: New York, N.Y.  
October 25, 1973

Yours, etc.

FREDERICK P. HAFETZ  
Goldman & Hafetz  
60 East 42nd St.  
New York, N.Y. 10017  
(212) 682-8337  
Attorneys for Defendant  
Robert E. Rippy

TO:  
HON. PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, N.Y. 10007



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

-v- :

AFFIRMATION

THOMAS JOSEPH CARROLL, JOHN TURNER,  
a/k/a "JACK", VINCENT MC CLUSKEY,  
a/k/a "MIKE", ROBERT E. RIPPY,  
a/k/a "RIPP", CHESTER CRAWFORD, PAUL  
CRAWFORD, TERRENCE DEWEY MYERS and  
GEOFFREY MATTHEWS MANN,

: 73 Cr. 855

Defendants. :

- - - - - x

FREDERICK P. HAFETZ, a member of the bar of the State  
of New York, hereby affirms under penalty of perjury:

1. I am assigned counsel for defendant Rippy in the  
above-entitled case. This affirmation is submitted in support  
of defendant Rippy's motion for court inspection of the grand  
jury minutes and upon such inspection, dismissal of the indict-  
ment against him because of the absence of evidence of the  
crimes charged.

2. The facts set forth hereunder are based upon my  
conversations about the case with Assistant United States  
Attorney John Kenney, Esq., my client, and several co-counsel  
who, with their clients' consent, have related to me information  
concerning the case. It is my understanding that there is no  
substantial disagreement between the prosecutor and myself as to  
the material facts set forth in this affirmation.

3. At no time in the period covered by the indictment  
was defendant Rippy in New York City.

4. Defendant Rippy's first connection with this case occurred in mid-March of this year when co-defendant Paul Crawford came to see him at his home in Washington, D.C. Crawford stated that his brother, Chester, who was in New York, wanted to know whether Rippy was interested in participating in a fur truck robbery in New York. Shortly thereafter, Rippy spoke with Chester Crawford by telephone. In that telephone conversation Rippy advised Chester Crawford that he could not leave Washington because of bail conditions imposed in a pending case against him in Washington, but that he might be able to get someone to come to New York.

5. Shortly thereafter, approximately March 19, Rippy called co-defendant Myers and asked him to come to Rippy's house. There Rippy related that Chester Crawford in New York needed two people to participate in a fur robbery that he was planning in New York. Rippy further advised Myers that Paul Crawford was planning to go to New York for that purpose and he introduced Myers to Paul Crawford. The next morning Paul Crawford and Myers left Washington for New York.

6. Up to this time there had been absolutely no discussion by any of the alleged co-conspirators with Rippy that a post office robbery was being planned.

7. Rippy's next and last contact with any of the alleged co-conspirators in this case was several days after Myers and Paul Crawford returned from New York to Washington in mid-March. At that time, approximately two weeks before the date of the events alleged in the instant indictment, Paul Crawford came to Rippy's house in Washington and related that the robbery

that had been planned in New York did not occur and instead, while he was there, another robbery was performed - the robbery of a payroll construction office. Paul Crawford further stated that he had no intention of returning to New York. Approximately one day later, Myers came to Rippy's home and advised him that while he was in New York, the persons he saw there were planning a postal robbery. Myers stated that he did not want to participate in that.

8. The latter statement by Myers was the first knowledge acquired by Rippy that a postal robbery was contemplated in New York. After he received that information, Rippy neither saw nor spoke to any of the alleged co-conspirators until after his indictment.

9. The prosecutor has communicated to me an offer for Rippy to plead to the conspiracy count in the indictment with the other charges to be dismissed later. Defendant Rippy has rejected that offer. At all times he maintained his innocence of the charges and professed his desire to go to trial. During the course of my discussions with the prosecutor, I have advised him that while I did not dispute the putative evidence of the government, it is my firm belief that as a matter of law, crediting the government's proof, there was insufficient evidence to prove Rippy's guilt of the crimes charged. The prosecutor, while not disputing my statement of the material facts, has rejected my view of the law as applied to these facts.

10. For the reasons set forth in the accompanying memorandum of law, it is my view that exercise of judicial discretion to review the grand jury minutes in this case is clearly warranted.

WHEREFORE, I respectfully request that this Court inspect said minutes and upon such review, dismiss the indictment against defendant Rippy.

Dated: New York, N.Y.  
October 28, 1973

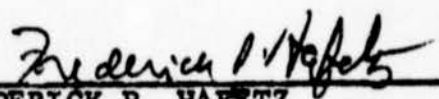
*Frederick P. Hafetz*  
FREDERICK P. HAFETZ



ATTORNEY'S AFFIRMATION  
OF SERVICE BY MAIL

FREDERICK P. HAFETZ, an attorney admitted to practice in the State of New York, hereby affirms, under penalty of perjury, that on the 26th day of October, 1973, deponent served the within Notice of Motion, Affirmation and Memorandum of Law upon John Kenney, Esq., Assistant United States Attorney, United States Courthouse, Foley Square, New York, New York 10007

the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

  
FREDERICK P. HAFETZ

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
UNITED STATES OF AMERICA

-v-

THOMAS JOSEPH CARROLL, et al.,  
(ROBERT E. RIPPY a/k/a "Ripp"),

Defendants.

: AFFIDAVIT

: 73 Cr. 855 (CMM)  
:

-----X  
STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. KENNEY, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and, as such, I am assigned to and familiar with the facts and prior proceedings in the above captioned matter.

2. This affidavit is submitted in opposition to the defendant Rippy's motion for in camera inspection of the grand jury minutes in the present case and dismissal of the indictment for insufficient evidence.

3. The government is not required to make an offering of its proof at trial in advance and declines to do so.

4. The summary of evidence suspected to be the government's case in chief against Rippy and set forth in the affidavit in support of the present motion is neither entirely accurate nor complete.

5. The government opposes inspection of the grand jury minutes, in camera, or otherwise because the stated purpose, to dismiss the indictment for insufficient evidence, is improper.

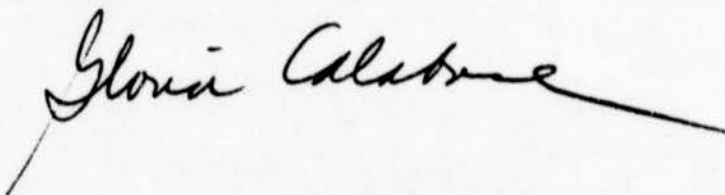
6. An indictment, duly voted by a properly constituted, unbiased grand jury is not properly reviewable for sufficiency of the evidence. Costello v. United States, 350 U. S. 359, 363-64 (1956); Lawn v. United States, 355 U. S. 339 348-350 (1957); United States v. Addington, 471 F. 2d 560, 568 (10th Cir. 1973); United States v. Tane, 329 F. 2d 848, 853 (2d Cir. 1964); United States v. Bentvena 319 F. 2d 916, 947 (2d Cir. 1963). See also United States v. Dornau (unreported) (S.D.N.Y. 5/22/73, Matzner, J.).

WHEREFORE, it is respectfully requested that Rippy's motion for inspection of the grand jury minutes and dismissal of the indictment be denied.

  
JOHN J. KENNEY  
Assistant United States Attorney

Sworn to before me this

5<sup>th</sup> day of November, 1973.



GLORIA CALABRESE  
Notary Public, State of New York  
No. 24-035340  
Qualified in Kings County  
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT  
Nov 7 4 35 PM '73  
S.D. OF N.Y.

----- x  
UNITED STATES OF AMERICA :

-against- :

THOMAS JOSEPH CARROLL, et al., :  
(ROBERT E. RIPPY, a/k/a "Ripp"), :

Defendants. :  
----- x

73 Cr. 855

# 39986

MICROFILM  
NOV 8 1973

METZNER, D. J.:

Defendant Rippy has moved for an order requesting court inspection of the grand jury minutes in 73 Cr. 855 and upon such inspection, dismissal of the indictment against him for insufficient evidence of the crimes charged.

The defendant is named with seven others in all three counts of this indictment. Count one charges a conspiracy to violate Sections 1708 and 2114 of Title 18 of the United States Code. Section 1708 makes it a crime for any person to steal mail bags from a United States mail truck. Section 2114 makes it a crime to wound or put in jeopardy the life of any person having custody of the United States mail by use of a dangerous weapon while attempting to effect or effecting a robbery



of the United States mail. Count two charges the defendants with murder in the first degree of an employee of the United States Postal Service in violation of Sections 1111, 1114 and 2 of Title 18. Finally Count three charges the defendants with a substantive violation of Section 2114 in that they assaulted and wounded a United States Postal Service employee during the course of a robbery of a mail truck.

The present motion is supported by counsel's affidavit as to what he considers the facts to be based on his investigation. The government's answer is that this summary of the evidence "is neither accurate nor complete." A review of the grand jury minutes will not resolve the dispute. An indictment duly voted by a properly constituted, unbiased grand jury is not properly reviewable for sufficiency of evidence. Costello v. United States, 350 U.S. 359, 363-64 (1956). Only the presentation of sworn evidence on the trial will properly adduce the facts upon which the court will rule at the close of the government's case.

Motion denied. So ordered.

Dated: New York, N. Y.  
November 7, 1973

Charles E. Metzger  
U. S. D. J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT

NOV 7 4 27 PM '73

S.D. OF N.Y.

----- x  
UNITED STATES OF AMERICA,

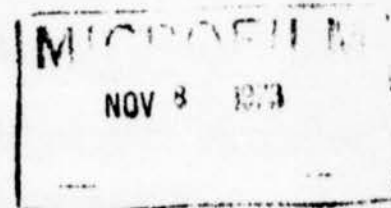
-against-

THOMAS JOSEPH CARROLL, et al.,

Defendants.

----- x  
METZNER, D. J.:

: # 39985  
: 73 Cr. 855



Pursuant to the court's direction in its discovery order dated August 6, 1973, the government originally indicated that it had no knowledge of any wiretap or electronic surveillance of the defendants Vincent McCluskey or Thomas Carroll.

On September 17, 1973, the original date for trial, the government filed an affidavit in camera which indicated that on September 13, 1973, it had for the first time become aware of the existence of a wiretap on the telephone of a third party, authorized by the Superior Court of the State of New Jersey. In monitoring this telephone, conversations in which the defendants McCluskey and Carroll participated were overheard.

The government has now submitted to the court for an in camera inspection the order authorizing the interception of wire communications, the authorization and application for the interception by the state Attorney General, and the affidavit for the application. In addition, it now appears that a bug was installed to pick up oral communications and the papers for this installation have also been submitted. The government has also represented that these tapes have never been in its custody or control, nor have they been listened to by the federal officials. It also represents that the local authorities have stated that there is nothing in the tapes relating to the crimes charged in this indictment.

After reviewing these various documents, I find that the orders authorizing the interception of wire and oral communications were in all respects legal and proper under the New Jersey Wiretapping and Electronic Surveillance Act, 2A N.J. Stat. § 156A-1 - 156A-26, which tracks the federal statute, 18 U.S.C. § 2510, et seq.

Rule 16a, Fed. R. Crim. P. provides that a defendant is entitled to discover any "relevant" written or recorded statements made by him which are

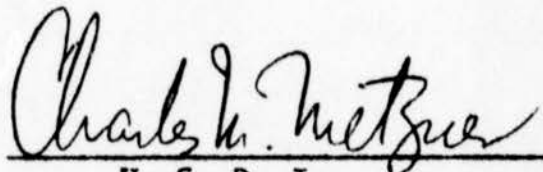


"within the possession, custody or control of the government." The government is therefore not required to obtain these recordings from the State of New Jersey, and to turn them over to the defendants, in order to comply with the court's discovery order dated August 6, 1973.

The papers submitted by the government on September 17 and October 19, 1973 shall be sealed and maintained by the Clerk of this court as part of the record in this case.

So ordered.

Dated: New York, N. Y.  
November 7, 1973

  
U. S. D. J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
UNITED STATES OF AMERICA,

-v-

WILLIAM MC CLOSKEY

Defendant.  
-----X

CONSENT  
ORDER EXTENDING  
BAIL LIMITS  
73 CR 972 CMH  
73 CR 855

The defendant having made application for enlargement of his bail limits to permit him to travel from the Southern and Eastern Districts of New York to the District of Florida for the purpose of returning to his home and conducting his usual business affairs, and the court, upon due deliberation having granted said application, it is

ORDERED that the bail limits as prescribed in the defendant's bail bond executed on September 24<sup>th</sup> 1973 be and they hereby are extended to include the Southern and Eastern Districts of New York and the District of Florida for the purpose of returning to his home and conducting his usual business activities, and it is further

ORDERED, that except for the provisions of the foregoing paragraph, the defendant shall abide by and comply with all terms and provisions of his bail bond executed on Sept-24, 1973 and the defendant shall not depart from the Southern or Eastern Districts of New York and the District of Florida and it is further

ORDERED, that the defendant shall return to the Southern District of New York and appear before this court within twenty-four hours of the receipt by his attorney, who has filed a notice of appearance herein, of a written communication to that effect from the United States Attorney for the Southern District of New York.

Dated: New York, N. Y.

78a

November 20, 1973

Charles H. Lieberman  
U. S. D. J.

I hereby apply for and consent to be bound by the  
provisions of the foregoing order.

William McCloskey  
Defendant

Consented to

John J. Kenney  
United States Attorney

The **Public Service Mutual Ins. Co.**

for the above defendant

hereby consents to the entry of the foregoing order and expressly agrees and covenants that the granting of this application shall not release it from any of its obligations on the bond herein.

*Public Service Mutual Ins. Co.*  
By *Abraham Newman*

Attorney-in-fact, (Corporate Seal)

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

On this 20 day of November, 1973 before me personally appeared *Abraham Newman* to me known, who being by me first duly sworn did depose and say that he resides at 70 E 10th St. that he is atty in fact of *Public Service Mutual Ins. Co.* the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order and authority of the board of directors of said corporation, and that he signed his name thereto by like order and authority.

*Suzanne S. Langford*  
Notary Public.



UNITED STATES DEPARTMENT OF JUSTICE  
BUREAU OF PRISONS  
MEDICAL CENTER FOR FEDERAL PRISONERS  
SPRINGFIELD, MISSOURI 65802

November 15, 1973

Honorable Charles M. Metzner,  
United States District Judge  
United States Court House  
Foley Square  
New York, New York 10007

Re: McCLUSKEY, Vincent  
Reg. No. 21310-175  
73 Cr. 855



Dear Judge Metzner:

In accordance with your order of September 17, 1973, psychiatric examination and observation has been completed and the above-named subject is ready to be returned to your district court.

It is the professional staff opinion that the defendant, Vincent McCluskey, is presently free of mental disease or defect and we consider him competent to return to court to stand trial.

Enclosed are two copies each of Report of Psychiatric Evaluation dated November 14, 1975, and Report of Psychiatric Staff Examination dated November 13, 1973.

Sincerely,

Jack Eardley, M. D.  
Acting Coordinator of Mental Health

FORWARDED:

Pasquale J. Ciccone, M. D.  
Director

Enclosures - 4

cc: Bureau of Prisons, Attn: Coordinator for Mental Health Services  
U. S. Marshal, U. S. Court House, Foley Square, New York, New York  
10007 (w/o enclosures)

14

MEDICAL CENTER FOR FEDERAL PRISONERS

81a

Springfield, Missouri

SPECIAL PROGRESS REPORT

"O"

Committed Name McCLUSKEY, Vincent

Reg. No. 21310-175

Date 11/13/73

REPORT OF PSYCHIATRIC STAFF EXAMINATION

Mr. Vincent McCluskey was received here on October 18, 1973, on Court Order of the Honorable Charles M. Metzner, United States District Judge, United States District Court for the Southern District of New York, under provisions of Title 18, Section 4244, for the determination of competency to stand trial. He is charged with conspiring to steal mail bags, attempted murder.

He has been undergoing psychiatric evaluation for the past 26 days. He was given his orientation upon his arrival by a trained senior officer specialist. He was seen on the first working day by a staff psychiatrist, a psychiatric nurse and then daily while in lock-up. He was seen within 24 hours by a trained correctional counselor. He was interviewed by a senior classification social worker during his first week.

He was given a physical examination as well as laboratory tests and x-rays.

He was interviewed and evaluated by Emasue Snow, M. D., Psychiatrist.

He was given the following psychological tests: Rorschach Ink Blot, House-Tree-Person, Shipley Institute of Living Scale, Minnesota Multiphasic Personality Inventory, Bender-Gestalt, Gorham Proverbs and Rotter Incomplete Sentences.

He was seen by Daniel V. Taub, Ph.D., Clinical Psychologist, who interpreted the tests and conducted a psychological interview.

He was advised, counseled, observed and cared for by psychiatrists, psychologists, correctional officers, counselors and psychiatric nurses.

Finally, he was seen today by the below-listed staff who interviewed him, studied his present chart and previous reports, discussed the case and came to the following conclusion:

We find that Vincent McCluskey is presently free of mental disease or defect and we consider him competent to return to court to stand trial.

DIAGNOSIS: Dyssocial reaction.

FOR THE STAFF:

*Jack Eardley*

Jack Eardley, M. D.

Acting Coordinator of Mental Health

Staff members present:

Drs. Eardley, Fain, Snow, Pickens,

Varhely, Taub

Ms. Creson, Ms. Pollard

Mr. Bouldin, Mr. Davidson

JE:fea

Typed 11/15/73

M. C. F. P.

82a

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT "O"

Committed Name MCCLUSKEY, Vincent

Reg. No. 21310-175

Date 11/15/73

REPORT OF PSYCHIATRIC EVALUATION

IDENTIFICATION:

This is a 26 year old white male who was admitted to the Medical Center for Federal Prisoners on October 18, 1973, pursuant to an order issued by the U.S. District Court, Southern District of New York, under the provisions of Title 18, Section 4244, for observation to determine his mental competency to stand trial. He is charged with conspiracy to steal mailbags and attempted murder.

RELEVANT INFORMATION:

The only pertinent information about this patient that was made available to us here was that the defendant raised the question of his mental competency to stand trial by an affidavit filed on September 6, 1973, eleven days prior to the trial date set for September 17, 1973. In addition, we received copies of the reports submitted by Dr. David Abrahamsen and Dr. Stanley Portnow who examined this individual in New York City on September 12, 1973. Both prior examiners agreed that his behavior was not consistent with any known psychiatric syndrome. Dr. Abrahamsen concluded that the patient was malingering but Dr. Portnow recommended that the extent of exaggeration of his symptoms could only be evaluated by a period of observation in a hospital setting.

HOSPITAL COURSE:

Mr. McCluskey has been under psychiatric observation at the Medical Center for Federal Prisoners for the past 24 days. Throughout this period of time he was able to function independently, maintaining the necessary standards of personal hygiene, and relating adequately to others in the open population without incident. He showed no confusion in going to a main dining hall for meals and his behavior was appropriate and rational in the hospital when he was not being examined directly by the psychiatric or psychological staff. However, each time he was seen privately by one of four psychiatrists who examined him, or seen for psychological testing, he resisted all inquiries into the integrity of his mental status. His responses to questions were selectively limited.

PSYCHIATRIC EXAMINATION:

At private interviews by this examiner Mr. McCluskey came promptly to the office, sat comfortably in a chair provided for him and there was no hyperactivity, tremors, or motor retardation observed. He kept his gaze diverted most of the time, glancing at the interviewer directly only on occasion but when he made direct eye contact he quickly looked away again. His responses to questions

M. C. F. P.

83a

SPRINGFIELD, MISSOURI

SPECIAL PROGRESS REPORT "O"

Committed Name MCCLUSKEY, Vincent

Reg. No. 21310-175

Date 11/15/73

-2-

when he chose to answer were relevant and coherent, for example, he answered he was born in Tallahassee, Florida, and was 26 years old. Most of his further responses were "I don't know" but even this answer was appropriate in the context of the situation. When he was questioned directly about the charges pending against him or reason for his transfer to this institution, he responded rationally, "That is my personal business and I don't care to discuss it." When a neurological examination was attempted, Mr. McCluskey was deliberately uncooperative, he refused to stand with his eyes closed and arms outstretched to test his equilibrium. Although the purpose of this was explained to him carefully, he voiced the opinion that my directions were "foolish" and he did not choose to cooperate. He showed no muscular cogwheel rigidity as would be expected in a state of catatonic psychosis, no automatic obedience or bizarre posturing. All of these observations revealed the absence of symptoms of alteration of consciousness and suggested that he was consciously refusing to reveal his true mental grasp and capacity.

500mg of Sodium Amytal dissolved in 10cc of sterile water was administered slowly intravenously on November 12, 1973. Mr. McCluskey relaxed and spoke readily with this examiner in a normal conversational flow during an interview that lasted approximately 45 minutes. He was awake and related in a friendly, spontaneous manner three hours later and again interviewed privately five hours afterwards. At that time he acknowledged that he was not incompetent to stand trial and had attempted to conceal his true mental capabilities because he felt he was "fighting for my life".

Mr. McCluskey showed a normal range and depth of emotional expression during the days following this procedure; he no longer avoided direct responses to questioning and his behavior on the ward was quiet and appropriate. His level of intellectual function is within the average range and his fund of information is compatible with his reportedly eighth grade education.

In my opinion, Mr. McCluskey is fully aware of the nature of the charges pending against him and is capable of assisting counsel in his own defense if he chooses to do so.

DIAGNOSIS:

Dyssocial behavior.

REVIEWED BY:

*Emasue Snow M.D.*  
EMASUE SNOW, M.D.  
Staff Psychiatrist

*Jack Cardley M.D.*  
Jack Cardley, M.D.  
Acting Coordinator, Mental Health

Dictated: 11/15/73

ES:sb

Typed: 11/19/73



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA :

-v- :

AFFIDAVIT

ROBERT E. RIPPY, a/k/a "RIPP"  
#132615 :

73 Cr. 855  
(CCM)

Defendant . :

- - - - -x

STATE OF NEW YORK )  
COUNTY OF NEW YORK :  
SOUTHERN DISTRICT OF NEW YORK )

SS.:

12/4/73

JOHN J. KENNEY

being duly sworn,

deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has charge of the prosecution of the above named case; that the defendant ROBERT E. RIPPY a/k/a Ripp has been indicted by the Grand Jury for the Southern District of New York for the unlawful killing of a United States Postal Guard in violation of Section 1111, 1114, 371, and 2, Title 18, United States Code, among other crimes

The indictment was filed in the United States District Court for the Southern District of New York on 14th day of September, 1973 The defendant is now confined in LORTON CORRECTIONAL INSTITUTION & REFORMATORY on a charge of violating an unknown statute and his confinement will terminate at an unknown time.

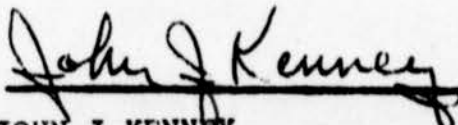
S.D. OF N.Y.

Nov 30 10 21 AM '73

FILED  
U.S. DISTRICT COURT

That the case is now on the calendar of the  
United States District Court for the Southern District  
of New York for trial  
and it is necessary that the defendant appear and  
prepare to stand trial.

WHEREFORE, your deponent respectfully prays  
that a writ of habeas corpus ad prosequendum issue,  
directing the Warden of the Lorton Correctional  
Institution and Reformatory, the United States Marshal  
for the District of Columbia,  
and the United States Marshal for the Southern District  
of New York to produce the above named defendant in  
the United States District Court for the Southern  
District of New York,<sup>Room 1105</sup> United States Court House, Foley  
Square, New York, N.Y., on December 4th, 1973,  
at 10:00 A.M.  
and after the said defendant has been discharged or  
convicted and sentenced on said indictment, to return  
him to the Lorton Correctional Institution and Re-  
formatory.

  
JOHN J. KENNEY  
Assistant United States Attorney

Sworn to before me this

29<sup>th</sup> day of November 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

86a

\*\*\*\*\*  
UNITED STATES OF AMERICA \*  
VS. \*  
THOMAS CARROLL \*  
\*\*\*\*\*

MOTION OF CO-COUNSEL



RE: Cr. # 855-73  
CHM

Comes now petitioner; Thomas Carroll respectfully requesting of this Honorable Court to grant him the right to act as co-counsel to his present counsel, Mr. Michael P. Dizenzo Esquire.

Petitioner relies in part on: (XXX)(1789) Dougherty vs. U.S. as well as other recent decisions that the Court is aware of as well as his rights as guaranteed by our Constitution of the United States.

Wherefore your petitioner requests of this Honorable Court to allow him to act as co-counsel and to notify him of this right prior to trial on the above numbered indictment number.

Copy sent to U.S. Attorney  
12/6/73 Eric  
Pro Se Clerk

16

Most respectfully submitted

*Thomas J. Carroll*

This 23 Day of November 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

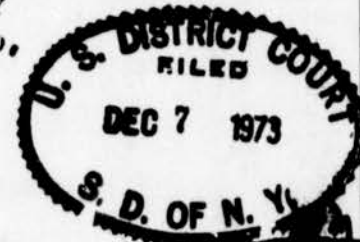
-----X  
UNITED STATES OF AMERICA

vs.

73 CR 855 (CMM)

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack", ~~NOTICE OF MOTION~~  
VINCENT McCLOSKEY, a/k/a "Mike", ROBERT RIPPY  
a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and GODFREY MATTHEWS  
MANN,

Defendants



-----X  
PLEASE TAKE NOTICE that upon the annexed affidavit of  
JOHN F. MARTIN, attorney for defendant McCLOSKEY, a Motion will  
be made at this court before the Hon. Charles M. Metzner, USDJ,  
on December 10, 1973 at 10:00 in the forenoon thereof, or as  
soon thereafter as counsel can be heard for an Order severing  
the defendant, McCLOSKEY, from this action and permitting him  
to plea to the herein Indictment.

Dated: New York, N.Y.  
December 7, 1973

Yours, etc.,

TO:

JOHN J. KENNEY  
Assistant U.S. Attorney

*John F. Martin*  
JOHN F. MARTIN  
Attorney for McCloskey  
342 Madison Avenue  
New York, N.Y. 10017  
212 - 279- 6995



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x 73 CR 775 (C/M)

UNITED STATES OF AMERICA

vs.

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack",  
VINCENT McCLOSKEY a/k/a "Mike", ROBERT RIPPY  
a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and GODFREY MATTHEWS  
MANN,

AFFIDAVIT

Defendants

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

JOHN F. MARTIN, defendant McCLOSKEY's attorney, being  
duly sworn, deposes and says:

A search of the Criminal Docket indicates that the In-  
dictment herein was filed on September 11, 1973 and that on  
September 17, 1973 some of the defendants appeared in court and  
made various pleas in conjunction with such indictment.

The docket indicates that VINCENT McCLOSKEY appeared in  
court but there is no record concerning any plea on his part  
and the only notation that I have been able to find is that  
McCLOSKEY was committed by Order of the Court to Springfield,  
Missouri.

I have attempted to obtain Minutes but have been unable  
to do so to date.

It would appear that McCLOSKEY did not plead to the  
Indictment herein and in view of this, I would like, on behalf  
of the defendant, to enter a plea of "Not Guilty" and to have  
time to make motions with respect to the Indictment so that  
the defendant will not be deprived of his constitutional rights,  
both procedurally and substantively, to move and test the In-  
dictment and to plead thereto and to make such motions and

moves as may be permitted under law so as to prepare a proper defense.

I respectfully request the Court to sever the defendant, McCLOSKEY from this action and to permit him to enter a plea when the case is called on December 10, 1973 and thereafter, for sufficient time to make motions and to otherwise proceed with the case.

  
JOHN F. MARTIN

Sworn to before me this 7th  
day of December, 1973



GLORIA McGEADY  
Notary Public, State of New York  
Qualified in Orange County  
Term Expires March 30, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

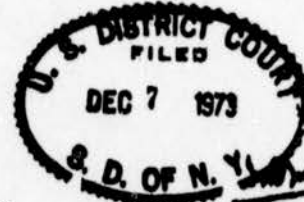
vs.

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack",  
VINCENT MC CLOSKEY a/k/a "Mike", ROBERT RIPPY  
a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRANCE DEWEY MYERS AND GODFREY MATTHEWS  
"AIN,

Defendants.  
-----X

73 CR 855 (CMM)

NOTICE OF MOTION



PLEASE TAKE NOTICE that upon the annexed affidavit of JOHN F. MARTIN, attorney for defendant MC CLOSKEY, a motion will be made at this court before the Hon. Charles M. Metzner, USDJ, on December 10, 1973, at 10:00 in the fore noon thereof, or as soon as thereafter, as counsel can be heard for orders providing the following relief:

- 1) Adjourning the trial of the action herein for a period of at least one month to enable the defendant McCloskey and his counsel to prepare for the trial and adequately defend the case.
- 2) Severing the defendant MC CLOSKEY from this trial and permitting him to be tried separately.
- 3) Granting inspection of the Grand Jury minutes herein and the Grand Jury minutes in Indictment 73 CR 972, and to make available to defendant a copy of said minutes upon the ground that matters occurred before the Grand Juries which may constitute grounds for motion to dismiss either or both indictments.
- 4) Extending defendant's time to move to dismiss the indictment herein until two weeks after entry of the order determining this motion.
- 5) Dismissing the indictment against the defendant MC CLOSKEY as to Count I of the indictment.
- 6) Dismissing the indictment because the defendant MC CLOSKEY was deprived of adequate and effective counseling and legal representation and if compelled to proceed to trial on December 10, 1973, will be deprived of his Constitutional rights to be represented by counsel, in violation of the Sixth Amendment of the United States Constitution.

7) Dismissing the indictment and all charges against the defendant MC CLOSKEY on the grounds that the treatment and overall conditions and happenings and incidents under which he was held are violative of a due process of law and contaminated the whole judicial proceedings so as to deprive him of procedural and substantive due process of law in violation of the Fifth Amendment of the United States Constitution.

8) Suppressing as evidenced herein all written and oral statements which may have been made by the defendant to the U.S. Attorney's office or the FBI agents during the month of November, and particularly on or about November 26, 1973.

9) Requiring the U.S. Attorney, the Federal Bureau of Investigation, and the Post Office Department to provide defense counsel with copies of all investigative reports conducted and obtained by them from April 5, 1973 up to the present date.

10) Requiring the Post Office Department and FBI to provide to defense counsel complete copies of all news releases issued by their agencies, and complete transcripts of all press conferences or press statements about this case issued by said agencies.

11) Requiring the U.S. Attorney's office to furnish to the defendant a statement of all and any conditions and agreements made with any of the defendants herein, or with any severed defendants in order to induce them to enter into pleas and/or any promises, agreements, or arrangements made between the U.S. Attorney's office and such defendants together with copies of any and all written agreements, stipulations, or conditions.

12) Granting defendant MC CLOSKEY a severance and separate trial on all accounts herein.

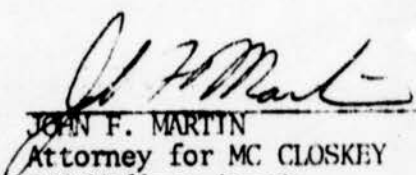
13) Postponing the trial of the defendant MC CLOSKEY in consequence of his not being prepared for trial.

14) Setting a hearing to inquire into the facts and circumstances necessary to determine the forgoing motions.



15) For such other and further relief as to the grounds may seem just and proper.

Dated: New York, N. Y.  
December 6, 1973

  
JOHN F. MARTIN  
Attorney for MC CLOSKEY  
342 Madison Avenue  
New York, N. Y. 10017

TO:

JOHN J. KENNEY  
Assistant U. S. Attorney

(212) 279-6995

-----X

UNITED STATES OF AMERICA	:	
vs.	:	73 CR 855
THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack",	:	AFFIDAVIT
VINCENT MC CLOSKEY a/k/a "Mike", ROBERT RIPPY	:	
a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD,	:	
TERRENCE DEWEY MYERS and GODFREY MATTHEWS	:	
MANN,	:	
Defendants.	:	

-----X

STATE OF NEW YORK     )  
COUNTY OF NEW YORK    ) ss.:

JOHN F. MARTIN, defendant MC CLOSKEY's attorney, being duly sworn,  
deposes and says:

On December 4, 1973 I was substituted as attorney for the defendant MC CLOSKEY in open court before Judge Metzner. The family of the defendant MC CLOSKEY first visited my office on Friday, November 30, 1973 and indicated to me that they felt the defendant was not properly prepared for trial and asked if I could arrange to represent him. I then called Jay Goldberg, who had been the representing attorney and told him of the situation, and he advised that he had been substituted around November 26, 1973 by Mr. Panzer, and that this substitution had been ordered by the court.

On Monday, December 3, 1973, in company of the defendant's wife, I visited the chambers of Judge Metzner and advised his secretary of the situation, and then appeared before Judge Metzner to advise him of the circumstances, and requested that the court permit me to interview the defendant. After interviewing the defendant and again speaking with the family and reviewing Mr. Goldberg's file for approximately one hour, I agreed to accept the case and notified the Judge's secretary to that effect. Arrangements were made to appear before the court on December 4, 1973, at which time the defendant was brought to court and Mr. Panzer also appeared before the court. On December 4, 1973 I made application to be substituted in place of

Mr. Panzer, and the court ordered such substitution.

On December 3, 1973, the court advised the undersigned that the case was scheduled to proceed to trial on December 10, 1973, and that the court did not wish to adjourn the case or to grant any postponement.

I obtained the file from Mr. Goldberg's office on Wednesday, December 5, 1973. I interviewed the defendant for a short time on December 4, 1973 and thereafter for several hours on December 5, 1973. I have commenced researching the law, compiling the facts, and preparing motions and the work has been mountainous and literally impossible to do with any degree of thoroughness in the period of time allocated for preparation of trial; that is, between December 6, and December 10, 1973. My review of the files and records which I have obtained failed to indicate any significant investigation and communications with witnesses or the physical factors or location of the incident. I have attempted to obtain an investigator to conduct an investigation and he has advised me that he is currently unable to do same because of prior commitments and in view of the time required to process legal papers, it will not be possible for me to independently conduct a thorough investigation.

I have been advised by the defendant and the defendant's family that Mr. Goldberg, who had been a previous attorney, was engaged recently in a long and complicated trial in the Southern District of New York in which he was fully and completely occupied and in which he expected to be occupied for some time to come, well beyond the trial date scheduled in this action. I have been advised by the defendant and the defendant's family that Mr. Panzer, who was substituted for Mr. Goldberg by the court, had not obtained the file from Mr. Goldberg's office, and had not interviewed or seen the Defendant MICLOSKEY from the time of his appointment through the time that I was substituted. The reason for this was that Mr. Panzer was also actively engaged in trial and therefore also unable to meet with the defendant <sup>to</sup> adequately prepare for trial or this action.

I regret having to ask the court to adjourn the trial of this action or to sever the action as to the defendant MC CLOSKEY, but in the interest of justice and in the interest of properly evaluating the case, preparing an adequate defense, I feel it is my duty and obligation to the court and to the defendant, as an officer of this court, to request on behalf of the defendant, that this case be adjourned for a period of at least one month, or as an alternative, that the defendant MC CLOSKEY be severed, and that a separate trial be held for him at a subsequent date. I do not believe that there can be any prejudice to any of the other defendants in view of the fact that some are on bail and that others have pleaded guilty to various charges. I have also been informed that there was a severance to a defendant named Jack Turner and that such severance was consented to readily by the People. I ask the court to sever as to the defendant VINCENT MC CLOSKEY and let him be tried at a subsequent date to prevent his being denied his constitutional rights.

*Not  
true  
plea guilty*

I have been advised that the defendant, since his incarceration on or about June 11, 1973, has been held either under segregated conditions or maximum security conditions in the detention facilities operated by the Government, from then until the present time. I have been further advised that the defendant MC CLOSKEY has been given medication; medicines and pharmaceuticals, against his will and without his permission, and that the defendant MC CLOSKEY has been prevented from entering into the regular prison routine, but has been given most regulated and confined treatment than that which is accorded to other prisoners.

The defendant is a man now 37 years of age, who is married and owns a home in the State of New Jersey, and has four children. He has been a life-long resident of this area and all of his friends and relatives reside in or about this area. I have been advised by the defendant and his family that the defendant has never been convicted of any crime. Despite this background, the court has held the defendant on \$200,000 bail, which <sup>is</sup> a practical matter



tantamount to no bail in view of the defendant's limited financial means. He has been so held despite, as I understand, the evidence and information available. The fact that there is no eye witness or other evidence linking the defendant with the crimes charged, except the testimony supposedly to be given by some defendants herein, who have pleaded guilty to the actual incidents charged in the crime and who would, under the best of circumstances, constitute evidence given by prejudiced interested accomplice testimony.

Since the defendant has been incarcerated, he has been acting quite strangely and irrationally. Examinations have been conducted by psychiatrists and a thorough investigation was conducted by a federal hospital institution to ascertain the sanity of the defendant. These reports appeared to support the findings that the defendant is sane and competent to stand trial. This might be, but his actions insofar as the family and even to the investigating physicians, appear strange and erratic. There were also neurological and physical symptoms which indicated some distress to the defendant, including tremors and failure for a basic knee reflex. I asked the court to consider the medical reports and hospital findings as being before it, for the purpose of this motion.

I have been advised by the defendant and the defendant's family that there were two staff meetings in the federal hospital where he was examined and the report appears to indicate that there was one staff meeting. I have also been advised by the defendant that he was isolated and placed into solitary confinement while in that hospital. In my several meetings with the defendant I have found him strange, unkempt, and often times his conversation is mumbled, jumbled, and unintelligible. In view of these incidents it would seem that a possible defense of insanity might be applicable and time would be needed in order to conduct the proper examinations and to obtain the fact/L background and evidence for that purpose.

I have been advised that on or about November 25 or 26, 1973, the defendant was taken to the U. S. Attorney's office where he was interviewed by the U. S. Attorney and an FBI Agent without any legal representation and that

at some time during this period, he was required to sign a paper and make statements before the U. S. Attorney and the FBI representative. At or around this same period of time, it is believed that Mr. Goldberg, a former attorney for the defendant, had advised the court that he would no longer be representing the defendant and the court thereafter appointed Mr. Panzer as the defendant's attorney, but Mr. Panzer was busy on trial and was not able to consult with the defendant. It would seem that any document signed by the defendant and any oral statements made by the defendant, if any, to the U. S. Attorney and to the FBI agent, should be suppressed and excluded from being permitted into evidence in this action and that at least a hearing should be held to inquire into all other circumstances surrounding the transaction.

I have been advised by the defendant and the defendant's family, that they had never requested a change in attorneys and that they had paid a substantial sum of money to be represented by their previous attorney. I have been advised that Mr. Goldberg was relieved by the court on his representation that the defendant and his family were without funds to pay counsel fees and that the court thereupon appointed Mr. Panzer at the request of Mr. Goldberg, despite the fact that Mr. Panzer was in fact, actually engaged in trial and did not have the time to properly and adequately prepare the case for trial.

I have been advised, as earlier indicated, herein, that both Mr. Goldberg and Mr. Panzer were actually engaged in trials. It would appear that from the circumstances, the defendant did not have adequate legal representation in order to properly prepare and be ready for trial on December 10, 1973. In view of this, it appears that the defendant is being and will be deprived of his constitutional and statutory rights to have active counsel at all stages of proceedings should a trial of this action continue. More so is this apparent, because of the obvious circumstances indicating lack of legal representation as recently as the end of November 1973, when the U. S. Attorney and the FBI agent spoke to the defendant without any defense counsel present, and in fact, even had the defendant sign a document couched

It is my understanding that the indictments in this action are superceding indictments to an original indictment bearing a different and earlier number of this Court. I understand that the testimony and evidence which was used on the herein indictment and on its predecessor, failed to list the names and existence of any other defendants, accomplices or co-conspirators and that such indictment was predicated on testimony that the defendants named herein were the sole defendants, accomplices or co-conspirators.

I have been further advised that another indictment No. 72 CR 972, was handed down naming two additional defendants, Harry Johnson and William McCloskey and that this subsequent indictment came now subsequent to the original trial date for this action which was scheduled for September 17, 1972.

It is my understanding that a motion was granted consolidating this indictment and indictment 972 for the purposes of trial.

I believe that the defendants in this action are named as co-conspirators with the defendants in indictment No. 972 but are not defendants in indictment No. 972. It does not appear, however, that the defendants in indictment No. 972 were named as co-conspirators in this indictment. I am asking the Court to grant an inspection of the Grand Jury minutes of the consolidated indictments; that is, this indictment and indictment No. 972 and further request the Court to permit the undersigned to inspect the minutes of both indictments. I believe that an inspection of such minutes will grant grounds upon which the defendant, McCloskey, can move to dismiss the indictment herein based upon the contradictory evidence under which indictment No. 972 was found. I believe that a reading of these minutes



and the evidence adduced from them will provide evidence and grounds upon which the Court may dismiss both indictments as being contradictory, one as to the other, so as to cause both to be inherently false and defective and without substance as a matter of law.

To compel the defendant to proceed to trial as a defendant with the co-defendants in this indictment, and with the co-conspirators in indictment No. 972, is a prejudicial misjoinder and will prevent the defendant, McCLOSKEY, from obtaining a fair trial. He will be unable to call any of the co-defendants in this indictment or co-conspirators in the other indictment as witnesses because as defendants they are not compelled to testify and, in fact, cannot be called to the stand. This limitation upon the availability of witnesses is obviously inappropriate and unfair to the defendant, McCLOSKEY, and deprives him of procedural and substantive due process of law in violation of the Fifth Amendment.

In addition to this, any admissions of the defendants in this action or the co-conspirators in the other action, will be prejudicial as a matter of law to the defendant, McCLOSKEY, and will prevent him from obtaining a fair trial.

I have been advised that there were extensive reports and investigations and news releases held and conducted by the Police Department of the City of New York, the Medical Examiner's Office of the City of New York, the Post Office Department, and the U.S. Attorney's Office and I ask that copies of all of such reports and information be made available to the defendant so that I can adequately conduct a defense of this action.

I have been advised and understand that several of the defendants herein have made arrangements with the U.S. Attorney's Office to take pleas and that some have taken pleas, and that




others might take pleas. I also understand that some of these individuals will be called to testify at the trial against the defendant McCLOSKEY. In order to properly prepare questioning of these defendants and to prepare for the defense, I respectfully ask the Court to direct the U.S. Attorney to supply the undersigned with any and all agreements and arrangements which he has made with any of the defendants who have, or will plead guilty, and who will or may testify on the trial herein. I further ask the court to arrange that copies of all written agreements and stipulations and the terms and conditions of oral agreements be provided to the undersigned.

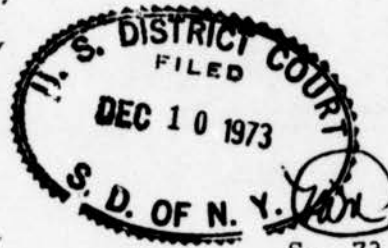
WHEREFORE, the defendant prays for the relief set forth in the notice of motion herein.

  
JOHN F. MARTIN

Sworn to before me this 6th  
day of December, 1973

  
GLORIA McGEADY  
Notary Public, State of New York  
Qualified in Orange County  
Term Expires March 30, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



101a

UNITED STATES OF AMERICA,

vs.

THOMAS J. CARROLL

S. 73 CR 855

NOTICE OF MOTION

Petitioner; Thomas Joseph Carroll herein called petitioner moves this Honorable Court to enter a formal Judgment of "Aquitall of Indictment # 855-73" for the following reasons:

To Wit:

Trial having commenced on this 10 day of December 1973 before the Honorable Charles Metzner, U.S.D.J. before a jury in the Southern District Court of New York. As follows:

STATEMENTS OF FACTS

Petitioner was arrested for the crime of: Title 18, sections 371, 1111, 1114, and 2, 2114 and 2, on the 13th of June 1973, petitioner is and has been in custody since that date due to his inability to raise bond which is in the amount of \$200,000.00

Petitioner was indicted for the crimes of title 18, sections 371, 1111, 1114, and 2, 2114 and 2, indictment # 73 Cr. 583, this indictment is signed by the grand jury foreman: Miss Irine Burke and the U.S. attorney, Mr. Paul J. Curran, no other signatures on the face of ~~the~~ the indictment.

79

On the 19th day of June, 1973 petitioner was re-indicted for the crimes of: title 18, sections; 371, 1111, 1114, and 2, 2114 and 2, this indictment number is: Cr. # 73-606, signed by the foreman of the grand jury, Miss Irine Burke and the U.S. Attorney, Paul J. Curran, once again on the bottom of the last page of the indictment, no signatures on the face of the indictment.

Once again on September 11th, 1973 your petitioner was again re-indicted for title 18; sections 371, 1111, 1114, and 2, 2114 and 2, the same violations as the earlier indictments, the newest being Cr. # 855-73. This latest indictment. Petitioner was brought to Court on this # 855-73 supposedly to begin trial but was never handed a copy of this indictment, # 855-73.

#### ARGUMENT

On October 15th, 1973 petitioner wrote to the Clerk of the Court of the Southern District of New York requesting: Certified copies of the original indictment and the following indictments as well as copies of Government motions to dismiss the earlier indictments. (copy of petitioners letter is annexed hereto for verification.)

On November 1st, 1973 petitioner received a request from the Clerk of the Court for the amount of \$8.00 to defray the cost of the copies of the requested material, the clerks name is Mr. Burghardt. (copy annexed hereto).

Again on November 1st, 1973 petitioner responded to the Clerks letter with a check to the clerk in the requested amount, \$8.00 along with another letter of inquiry as to certified copies and also copies of motions to the

INDICTMENTS  
Court to dismiss prior ~~motions~~, 503-73 and 606-73 and if for any reason they were not available to advise of that fact. (see letter copy also annexed hereto).

On November/4th, 1973 petitioner received copies of indictments, #'s, 503, 606, and 855 from the clerk of the Court Mr. Burghardt by mail. Petitioner notes that there was a difference between the copies of the indictments 503 and 606 as received from the clerk's office then the ones he received from the Court originally, the difference being that the ones the clerk sent were signed by the grand jury foreman and the U.S. Attorney. The clerk also sent a copy of 855 which petitioner never had before the clerk sent it and it is not signed.

Petitioner not being satisfied as to the copies received from the Clerk's office returned the whole envelope containing all three indictments, #'s 503, 606, and 855 back to the Clerk's office asking for certification of all three indictments. ( a copy of these indictments which the clerk forwarded on this date in mention are annexed hereto for the Court to inspect.) Enclosed also is a copy of the letter petitioner sent Mrs. Rosemarie Pignetti. (annexed hereto).

On November 17th, 1973 petitioner received "certification" of all of the indictments, 503, 606, and 855 and a bill for services. (annexed hereto).



On the 19th, of November 1973, our petitioner spoke over the phone to several clerks of the Southern District Court, Phone numbers: (212) 264-6513 and also number (212) 264-6351, petitioner spoke to the following named clerks: Rosemarie Bignetti and Mr. Burghardt or another male clerk. The following pertinent parts were discussed among other things:

Questions petitioner asked the clerks:

"Are the copies of all the indictments photostated from the originals?"

"Are the indictments complete as there are no signatures on several?"

"Did the Government make motions to dismiss 583 and 606?"

"Answers as follows" for the 19th

"Yes they are photostated from the originals, they are "certified!"

"Yes, they are correct and exact as we have them here completely!"

"No, there aren't any copies of motions filed here in the clerks office to dismiss the previous indictments."

---

Phone call of November 21st, (Wed), 1973 from petitioner to Mrs. Rosemarie Bignetti: (212) 264-6513

Questions: Please explain to me (petitioner) about these indictments and papers.

Answers: Mrs. Bignetti related that there was a mistake in the price but that everything I had received was complete and that the clerks office had certified it in its entirety.

Mrs. Bignetti also put me on the phone with the clerk who had made out my bill and he also assured me that everything was complete and certified properly.

"PETITIONER CONTENTS"

- # 1. Petitioner contends that there is no signature on indictment # 855-73, of either the grand jury foreman or the U.S. Attorney as appears on the other indictments, #'s 583 or 606, (exhibits annexed hereto).
- # 2. Petitioner contends that there is no filing number or microfilmed date or stamp on 855-73 as there is on 583 and 606, on the later two the dates are the correct dates of the grand jury. (exhibits annexed hereto).
- # 3. Petitioner further contends that the certification of the documents received from the clerk's office is genuine and complete as sworn to above the clerk's signature. (exhibit annexed hereto).
- # 4. Petitioner further contends, he verily believes that there is no "true bill" or indictment # Cr. 855-73 handed down by the grand jury, as prescribed by law, that in fact indictment number 855-73 is merely several pieces of typed paper in place of a true bill.

"CONSTITUTIONAL LAW"

Article Five of the ten original amendments of the Bill of Rights.  
(in part)

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury. (emphasis mine).

Petitioner seeks that honorable Court to produce the grand jury foreman and or the transcript of the proceedings had on the date of issuance of criminal indictment number 855-73 as well as the U.S. Attorney that presented it to the Grand jury to ascertain to the Court as well as petitioner that in fact a bonafide, genuine, certified copy of 855-73 was in fact handed down by the grand jurors of the Southern District of New York.

Petitioner seeks immediate relief on this matter as he has been in custody since June 13th, 1973.

Petitioner has clearly outlined his allegations and supported them by exhibits annexed hereto for the Courts inspection.

Petitioner prays this honorable Court grant him the relief requested herein.

Most respectfully submitted,

  
Thomas Joseph Carroll

SWORN BEFORE ME THIS 10 DAY OF December 1973.

---

October 15, 1973

WEST DISTRICT OF NY  
 DISTRICT OF NEW YORK  
 100 WALL STREET  
 NEW YORK 10007

Re: UNITED STATES of AMERICA  
 against  
 THOMAS CARROLL, et'al,  
 S. 73 Cr  
 S. 73 Cr 606  
S. 73 Cr

SIR:

Please forward us a certified copy of the original indictment, indictment  
 NO. 73 Cr. 606, copy of motions made by the UNITED STATES Attorney to  
 set aside the indictment, the superceding indictment NO. S. 73 Cr. 606, motions  
 of the U.S. attorney to dismiss the superceding indictment; Also a certified  
 copy of the present superceding indictment.

Notify me as to the amount the check should be made out for, and/or  
 the Federal House of Detention, 427 West Street New York N.Y. 10014.  
 Can't make out a check, until they know the amount.

Respectfully Yours,

*Thomas J. Carroll*

THOMAS J. CARROLL  
 18729 3/1  
 427 West Street  
 New York, N.Y. 10014



Raymond F. Burghardt  
CLERK

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK  
OFFICE OF THE CLERK  
U. S. COURTHOUSE  
FOLEY SQUARE, NEW YORK, N. Y. 10007

108a

November 1, 1973

Thomas J. Carroll  
427 West Street  
New York, N. Y. 10014

Dear Sir:

With reference to your letter of October 15, 1973.  
please be advised that copy/copies of papers  
requested will be furnished to you upon receipt  
of the statutory fee of \$ 8.00 Certified Check  
or Money Order.

Raymond F. Burghardt  
Clerk

*Rosemarie Fugnetti*  
Rosemarie Fugnetti  
Deputy Clerk

Re:	73 Cr. 583	Indictment.,	5 pages
	73 Cr. 606	Indictment.,	5 pages
	73 Cr. 855	Indictment.,	6 pages
		Total	<u>16</u>

@.50 per page.

~~Nov~~ Nov 4, 1973

109a

West Coast

Street NY

Home Filing Square

4 100 7

Ms. Rose Marie Fugnetti

Link Dear Sir

With reference to your reply of <sup>Nov 1, 1973</sup> ~~Nov 1, 1973~~  
+ Oct 15, 1973; Please find enclosed  
for ~~the~~ <sup>the</sup> Statutory fee of  
copies of papers requested.

3 Cr. 583 INDICTMENT

3 Cr 606 INDICTMENT

3 Cr 855 INDICTMENT

see now mention of motions made  
Attorney to dismiss ind 583, and  
1 requested. Please advise if any  
like, and why.

Yours faithfully for your in  
reply

Respectfully Yours

JJC

78729 C-4

427 West 87

NY NY 10014

the Court  
District Court  
Square  
New York

110a

November 14th, 1973

RE: U.S. vs. Carroll  
Indictment #'s 73 Cr. 583,  
Cr. 606, Cr. 855

AFI

please find the copies of the indictments you sent to me.  
letters to your office of October 15th, as well as November  
1973, I asked you for "certified copies" of the indictments  
on I am named in. I also asked you for copies of the motions the  
A.U.S.A. made to dismiss the prior indictments when the new ones  
ended down.

received is what I am sending you back, in your letter to my  
November 1st, you asked for \$8.00 for the papers, I sent it  
received just these indictment copies with writing on them. I  
in these from my attorney. I would appreciate "certified  
of the original indictments, complete with the foremans name  
complete particulars as well as the motions the A.U.S.A. had  
when he applied for new indictments.

forward me the papers I request, certified, so I may proceed  
motions before trial. Thank you for your time.

Yours most truly,

*Thomas Carroll*  
Thomas Carroll  
427 West Street  
New York New York

TCXfile

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

- - - :

THOMAS JOSEPH CARROLL, JOHN DOE  
a/k/a "JACK", VINCENT McCLUSKEY  
a/k/a "TOM", ROBERT E. RIPPY  
a/k/a "RIP", CHESTER CRAWFORD,  
PAUL CRAWFORD, TERRENCE DEWEY  
MYERS and GEOFFREY MATTHEWS  
MANN, :

Defendants. :

INDICTMENT

73 Cr. 583

The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "TOM," ROBERT E. RIPPY a/k/a "RIP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114 Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, in violation of Section 1708, Title 18, United States Code.



JJK:vk

2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and other property of the United States, would and did (wound) and put in jeopardy the lives of the said persons by the use of dangerous weapons.

#### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and TERENCE DENNY MYERS went to the vicinity of Wall Street, New York, New York.
2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT MC CLUSKEY a/k/a "MIKE" in the vicinity of Fulton Street, New York, New York.
3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", CHESTER CRAWFORD, TERENCE DENNY MYERS and GEOFFREY MATTHEWS MAHN, met at Katz's Delicatessen, Houston Street, New York, New York.

(Title 18, United States Code, Section 371)

#### COUNT TWO

The Grand Jury further charges:

On or about the 5th day of April 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERENCE DENNY MYERS and GEOFFREY MATTHEWS MAHN, the defendants,

unlawfully, wilfully and knowingly and in the (perpetra-)  
tion and attempted perpetration of a robbery in violation  
of Title 18, United States Code, Section 2114, did (kill)  
an employee of the United States Postal Service, to wit,  
William Hickey, while he was engaged in and on account  
of the performance of his official duties, to wit, the  
guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111,  
1114 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the  
Southern District of New York THOMAS JOSEPH CARROLL, JOHN  
DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT  
E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DUNCAN MYERS and GEOFFREY MATTHEWS (AKA), the  
defendants, unlawfully wilfully and knowingly, did assault  
a person, to wit, Crawford Lawrence, having lawful charge,  
control and custody of mail matter and of property of the  
United States, with intent to rob, steal and purloin such  
mail matter and property of the United States, and in effecting  
and attempting to effect such robbery, did wound and put  
in jeopardy the life of the said Crawford Lawrence by use  
of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States  
Code.)

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FOREMAN

---

PAUL J. CONNER  
United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA :

-v- :

THOMAS JOSEPH CARROLL, JOHN DOE  
a/k/a "JACK", VINCENT INCLOSUREY  
a/k/a "TOM", ROBERT H. RIPPY  
a/k/a "BOB", CHRISTOPHER GRANFORD,  
PAUL GRANFORD, THOMAS DREWLY  
HARRIS and CHRISTOPHER HARRIS  
HARRIS,

Defendants. :

AMERICAN

S 73 Cr. 606

*id*

----- x

The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT INCLOSUREY a/k/a "TOM", ROBERT H. RIPPY a/k/a "BOB", CHRISTOPHER GRANFORD, PAUL GRANFORD, THOMAS DREWLY HARRIS and CHRISTOPHER HARRIS HARRIS, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114, Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, ~~to wit~~, from a United States mail truck in violation of Section 1708, Title 18, United States Code.

Not to be  
used for  
production

2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and other property of the United States, would and did put in jeopardy the lives of the said persons by the use of dangerous weapons.

added in (1)  
by [illegible]  
w/ [illegible]

#### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHRISTOPHER CRAWFORD, PAUL CRAWFORD and VINCENT INCUSKEY a/k/a "VINCE" went to the vicinity of Wall Street, New York, New York.
2. On or about the 22nd day of March, 1973, CHRISTOPHER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT INCUSKEY a/k/a "VINCE" in the vicinity of Fulton Street, New York, New York.
3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT INCUSKEY a/k/a "VINCE", CHRISTOPHER CRAWFORD, VINCENT INCUSKEY a/k/a "VINCE" and CHRISTOPHER MATTHEWS FINE, met at Kate's Dollhouse, 1000 Broadway Street, New York, New York.

(Title 18, United States Code, Section 371)

#### CHARGE

The Grand Jury further charges:

On or about the 5th day of April 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT INCUSKEY a/k/a "VINCE", ROBERT E. FINE a/k/a "RUFF", CHRISTOPHER CRAWFORD, PAUL CRAWFORD,



THOMAS DIXIE MYERS and GEOFFREY MATTHEWS HAINI, the defendants unlawfully, wilfully, knowingly, [with malice aforethought] and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did [murder and] kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111, 1114 and 2)

#### CHARGE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JAMES CHAMBERLAIN, JOHN LEE a/k/a "JACK", VINCENT McCLURE a/k/a "VIN", RICHARD E. RIVER a/k/a "RICK", GUYTON CHAMBERLAIN, and THOMAS DIXIE MYERS and GEOFFREY MATTHEWS HAINI, the defendants, unlawfully, wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

FOR THE

PAUL J. GELMAN  
United States Attorney

November 16, 1973, 19\_\_

Thomas Carroll  
West Street  
New York, New York

Raymond F. Burghardt

for the Southern District of New York, Dr.

Xerox copy of the Following Indictments:	\$40.00	Total
73 Cr 583, 5 pages, 73 Cr. 606, 5 pages,	8.00	Paid 11/12/73
73 Cr 855, 6 pages. @.50 per page.	32.00	Balance
Certification @ 1.00 per Document.		
29 pages - @ 1.00 per page.		
Raymond F. Burghardt Clerk		
<i>Rosemarie Fugnelli</i> Rosemarie Fugnelli Deputy Clerk		
Please remit <u>Certified Check or Money</u> <u>Order payable to the Clerk of the Court.</u>		

**United States of America** } ss:  
**Southern District of New York**

Raymond F. Burghardt  
 I, ~~JOHN LIVINGSTON~~, Clerk of the United States District Court for the Southern

District of New York, do hereby certify that the writings annexed to this certificate  
 To wit: Xerox copy of the Indictment filed June 14, 1973, 73 Cr 583,  
 U.S.A. -vs- Thomas Joseph Carroll, et al. This paper filed in this  
 court.\*\*\*\*\*

have been compared with their originals on file and remaining of record in this  
 office; that they are correct transcripts therefrom and of the whole of the said  
 originals.

IN TESTIMONY WHEREOF I have hereunto subscribed  
 my name and affixed the seal of the said Court at the  
 City of New York, in the Southern District of New  
 York, this 16th day of November  
 in the year of our Lord one thousand nine hundred  
 and Seventy-three and of the Independence of  
 the United States the One Hundred and Ninety-eighth.

Raymond F. Burghardt, Clerk.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

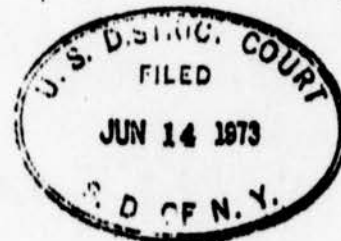
THOMAS JOSEPH CARROLL, JOHN DOE  
a/k/a "JACK", VINCENT McCLUSKEY  
a/k/a "MIKE", ROBERT E. RIPPY  
a/k/a "RIPP", CHESTER CRAWFORD,  
PAUL CRAWFORD, TERRENCE DEWEY  
MYERS and GEOFFREY MATTHEWS  
MANN,

Defendants.

7:3 CRIM. 583

INDICTMENT

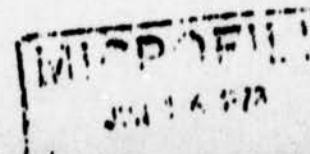
73 Cr.



The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114 Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, in violation of Section 1708, Title 18, United States Code.





2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and other property of the United States, would and did wound and put in jeopardy the lives of the said persons by the use of dangerous weapons.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and TERRENCE DEWEY MYERS went to the vicinity of Wall Street, New York, New York.

2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT MC CLUSKEY a/k/a "MIKE" in the vicinity of Fulton Street, New York, New York.

3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT MCCLUSKEY a/k/a "MIKE", CHESTER CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, met at Katz's Delicatessen, Houston Street, New York, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

On or about the 5th day of April 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT MCCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants,

unlawfully, wilfully and knowingly and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111, 1114 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK," VINCENT McCLUSKEY a/k/a "MIKE," ROBERT E. RIPPY a/k/a "RIPP," CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, unlawfully wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

Thomas J. Curran  
FOREMAN

PAUL J. CURRAN  
United States Attorney

JUN 20 1973

Application by the State to vacate the  
 North Carolina as the Camp Chaplain is  
 granted.

W. J. J. J.

JUN 25 1973

Application by the State to vacate the South  
 Carolina as the State is granted

W. J. J. J.

## United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.  
 THOMAS JOSEPH CARROLL, JOHN DOE  
 a/k/a "JACK", VINCENT MCCLUSKEY  
 a/k/a "MIKE", ROBERT E. RIPPY  
 a/k/a "RIP", CHESTER CRAWFORD,  
 PAUL CRAWFORD, TERENCE DEWEY  
 MYERS and GEOFFREY MATTHEWS  
 MAINT.

## Defendants.

## INDICTMENT

Title 18, United States Code,  
 Section 371

Title 18, United States Code,  
 Sections 1111, 1114 and 2

Title 18, United States Code  
 Sections 2114 and 2.

PAUL J. CUPPAN

United States Attorney.

A TRUE BILL.

FOREMAN

FBI-SD-143-70-SOM-402

JUN 14 1973

JUN 14 1973

JUNE 14, 1973. DEFTS - ROBERT E. RIPPY &amp; PAUL

CRAWFORD, Also ordered

BALMERIC, J.

JUNE 15, 1973 DEFTS. PAUL CRAWFORD &amp;

JOHN DOE, A/K/A "JACK" Also ordered

BALMERIC, J.

JUN 18 1973

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JUN 19 1973

Application for reduction of

bail on behalf of Vincent Mccluskey

is denied following argument.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.

JULIE THOMAS &amp; CARROLL - Paul Doe, etc.



**United States of America**

Southern District of New York

}

Raymond F. Burghardt

I, ~~JOHN LIVINGSTON~~, Clerk of the United States District Court for the Southern

District of New York, do hereby certify that the writings annexed to this certificate

To wit: Xerox copy of the Indictment filed June 19, 1973, 73 Cr 606,  
U.S.A. -vs- Thomas Joseph Carroll. This paper filed in this court.\*\*\*\*\*

have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have hereunto subscribed  
my name and affixed the seal of the said Court at the  
City of New York, in the Southern District of New  
York, this 16th day of November  
in the year of our Lord one thousand nine hundred  
and Seventy-three and of the Independence of  
the United States the One Hundred and Ninety-eighth.

Raymond F. Burghardt, Clerk.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA :

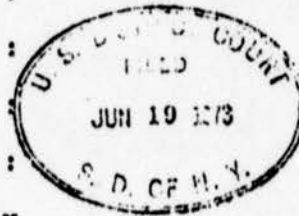
-v- :

INDICTMENT

THOMAS JOSEPH CARROLL, JOHN DOE  
a/k/a "JACK", VINCENT McCLOSKEY  
a/k/a "MIKE", ROBERT E. RIPPY  
a/k/a "RIPP", CHESTER CRAWFORD,  
PAUL CRAWFORD, TERRENCE DEWEY  
MYERS and GEOFFREY MATTHEWS  
MANN,

73 Cr.

Defendants. :



----- x  
The Grand Jury charges:

1. From on or about the 1st day of January, 1973, up to and including the day of the filing of this indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLOSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1708 and 2114, Title 18, United States Code.

2.a It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized depository for mail matter, to wit, from a United States mail truck in violation of Section 1708, Title 18, United States Code.

2.b It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and other property of the United States, would and did put in jeopardy the lives of the said persons by the use of dangerous weapons.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and TERRENCE DEWEY MYERS went to the vicinity of Wall Street, New York, New York.

2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JOSEPH CARROLL and VINCENT McCLUSKEY a/k/a "MIKE" in the vicinity of Fulton Street, New York, New York.

3. On or about the 5th day of April, 1973, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", CHESTER CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MANN, met at Katz's Delicatessen, Houston Street, New York, New York.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

On or about the 5th day of April 1973, in the Southern District of New York, THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JACK", VINCENT McCLUSKEY a/k/a "MIKE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD,

TERRENCE DENNEY MYERS and GEOFFREY MATTHEWS MANN, the defendants unlawfully, wilfully, knowingly, with malice aforethought and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickoy, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111, 1114 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "JOHN", VINCENT McCLOSKEY a/k/a "VINCE", ROBERT E. RIPPY a/k/a "RIPP", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DENNEY MYERS and GEOFFREY MATTHEWS MANN, the defendants, unlawfully wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

*Mr. J. J. Burke*  
FOREMAN

*Paul J. Quinn*  
PAUL J. QUINN  
United States Attorney



The 1st of June 1864  
 (Crown) paid at \$20,000.  
 (Mortgage) paid at \$20,000.  
 (Chas. D. D.) paid at \$25,000.  
 (Mortgage) paid at \$25,000.

The 1st of June 1864  
 (Crown) paid at \$20,000.  
 (Mortgage) paid at \$20,000.  
 (Chas. D. D.) paid at \$25,000.  
 (Mortgage) paid at \$25,000.

Wm. D. D.



130a

# United States of America

Southern District of New York

ss:

Raymond F. Burghardt

I, ~~JOHN W. WINTON~~, Clerk of the United States District Court for the Southern

District of New York, do hereby certify that the writings annexed to this certificate

To wit : Xerox copy of the Indictment filed September 11, 1973,  
73 Cr 855, U.S.A. -vs- Thomas Joseph Carroll. This paper filed in this  
court.\*\*\*\*\*

have been compared with their originals on file and remaining of record in this  
office; that they are correct transcripts therefrom and of the whole of the said  
originals.

IN TESTIMONY WHEREOF I have hereunto subscribed  
my name and affixed the seal of the said Court at the  
City of New York, in the Southern District of New  
York, this 16TH day of November  
in the year of our Lord one thousand nine hundred  
and Seventy-three and of the Independence of  
the United States the One Hundred and Ninety-eighth.

Raymond F. Burghardt, Clerk.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

134a

UNITED STATES OF AMERICA :

- v - :

INDICTMENT

THOMAS JOSEPH CARROLL, JOHN  
TURNER, a/k/a "Jack", VINCENT  
MC CLUSKEY, a/k/a "Mike",  
ROBERT E. RIPPY, a/k/a "Rip",  
CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and  
GEOFFREY MATTHEWS MAIN,

73 Cr. 855

42 AC.

filed

September 11, 1973

Defendants. :

The Grand Jury charges:

1. From or about the 1st day of January, 1973, up to and including the day of the filing of this Indictment, in the Southern District of New York and elsewhere, THOMAS JOSEPH CARROLL, JOHN TURNER, a/k/a "Jack", VINCENT MC CLUSKEY, a/k/a "Mike", ROBERT E. RIPPY, a/k/a "Rip", CHESTER CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY MYERS and GEOFFREY MATTHEWS MAIN, the defendants, and others to the Grand Jury known and unknown, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 1703 and 2114, Title 18, United States Code.

2.a. It was a part of said conspiracy that the defendants would steal and take mail bags from a letter and mail carrier and from a mail route and other authorized Assembly for mail matter, to wit, from a United States mail truck in violation of Section 1703, Title 18, United States Code.

2.b. It was further a part of said conspiracy that the defendants, in attempting to effect a robbery of persons having lawful charge, control and custody of mail matter and



73-1365

other property of the United States, would and did put in jeopardy the lives of the said persons by the use of dangerous weapons.

OVERLY ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts among others were committed in the Southern District of New York:

1. On or about the 20th day of March, 1973, CHESTER CRAWFORD, PAUL CRAWFORD and HERSCHEL ELMER MYERS went to the vicinity of Wall Street, New York, New York.
2. On or about the 22nd day of March, 1973, CHESTER CRAWFORD met with THOMAS JAMES CARROLL and VINCENT MC CUSKEY, a/k/a "Mike", in the vicinity of Fulton Street, New York, New York.
3. On or about the 5th day of April, 1973, THOMAS JAMES CARROLL, JOHN THURMAN, a/k/a "Skip", VINCENT MC CUSKEY, a/k/a "Mike", CHESTER CRAWFORD, HERSCHEL ELMER MYERS and GEORGEY HERTZBERG MALL, met at Max's Diner, 100 Nassau Street, New York, New York.

(Title 18, United States Code, Section 238.)

JOINT ACT

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York, THOMAS JAMES CARROLL, JOHN THURMAN, a/k/a "Skip", VINCENT MC CUSKEY, a/k/a "Mike", HERSCHEL ELMER MYERS, a/k/a "Skip", CHESTER CRAWFORD, PAUL CRAWFORD, THOMAS ELMER MYERS and GEORGEY HERTZBERG MALL, the defendants herein, unlawfully, feloniously, knowingly, with malice

afterthought and in the perpetration and attempted perpetration of a robbery in violation of Title 18, United States Code, Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck.

(Title 18, United States Code, Sections 1111, 1114 and 2.)

COURT TRIAL

The Grand Jury further charges:

On or about the 5th day of April, 1973, in the Southern District of New York THOMAS JOSEPH CARROLL, JOHN TURNER, a/k/a "Jack", VINCENT MC GLUSKEY, a/k/a "Mike", ROBERT B. RIPPY, a/k/a "Rip", CHESTER CRAWFORD, PAUL CRAWFORD, TERENCE DWYER MYERS and GEORGE MATTHEWS MARI, the defendants, unlawfully, willfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States, and in effecting and attempting to effect such robbery, did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon, to wit, a .32 revolver.

(Sections 2114 and 2, Title 18, United States Code.)

FOR THE

PAUL J. CORMAN  
United States Attorney

## AUTHORIZATION

IN THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK

United States vs. Thomas J. Carroll  
et al. Southern District of N.Y.  
Foley Square, New York

LOCATION NUMBER

32501

DOCKET NUMBERS  
MagistrateDistrict Court  
73 Cr. 895VOUCHER NUMBER  
134718

PROCEEDING (describe briefly)

Trial  
DAILY

- 1 ☒ Defendant Adult
- 2 ☐ Defendant Juvenile
- 3 ☐ Appellant
- 4 ☐ Probation Violator
- 5 ☐ Parole Violator
- 6 ☐ Habeas Petitioner
- 7 ☐ 225b Petitioner
- 8 ☐ Material Witness
- 9 ☐ Other (Specify below)

PERSON REPRESENTED (show full name &amp; status. Check box 1)

Thomas J. Carroll

Name already appears at 11 Pt. or as 20 Of above

## ATTORNEY'S STATEMENT

As the attorney for the "person represented" who is named above, I hereby affirm that: (1) the services or expenditures described in the section to the right are necessary to an adequate legal representation or defense in this case, and (2) the "person represented" affirms that he or she is unable to pay for the cost of these services. I therefore request authorization to obtain or incur them at the cost of the United States.

Michael P. Drenzo, Esq.

ATTORNEY'S SIGNATURE Date

SUCH SERVICES TO BE PROVIDED BY

NAME

TITLE OR ORGANIZATION

Court Reporters

TELEPHONE NO

257-4180

## COURT ORDER

Financial inability of the "person represented" has been established to the court's satisfaction and authorization requested above is hereby granted.

Signature of judge or magistrate Date

## SPECIAL AUTHORIZATIONS

APPORTION % TRANSCRIPT COST Judges Initials  
FINDINGS (e.g. pauperism, non-frivolousness, substantial question), IF REQUIRED BY 29 U.S.C. 783 HAVE BEEN ESTABLISHED  
DAILY TRANSCRIPT APPROVED

## CERTIFICATIONS OF ATTORNEY

- ☐ TRANSCRIPT WAS RECEIVED  
☐ I RECOMMEND PAYMENT TO CONTRACTOR OF AMOUNT CLAIMED  
☐ PAY ME BECAUSE A COPY OF MY ATTACHED CHECK OR RECEIPT SHOWS I PAID FOR TRANSCRIPT

APPROVED FOR PAYMENT

SIGNATURE OF JUDGE/MAGISTRATE

SIGNATURE OF CHIEF JUDGE COURT OF APPEALS

Payment in excess of statutory limitation approved under 18 USC 3006A(a)(3)

Date

\$

# USE ADDITIONAL BLANK SHEETS IF MORE SPACE IS NEEDED

If transcript requested, of what proceeding

Kind of expert, if "other"

Trial

Check category (white box) above and briefly describe below the service or expense and justifying reason for request. Reason may be in separate statement sealed by court.

# Necessary for proper defense

TOTAL ESTIMATE MASTERY TEST	FOR SERVICES	\$
	FOR EXPENSES	\$
	FOR TRANSCRIPT	\$

ESTIMATED TRANSCRIPT COST	ORIG	No. Pages	Per Pg	Extension	Deduct Amt. Apportioned

Excludes free copy for clerk of court

\*\*See instructions as to page rates

ACTUAL TRANSCRIPT COST	ORIG	No. Pages	Per Pg	Extension	Deduct Amt. Apportioned

TOTAL ESTIMATE MASTERY TEST	FOR SERVICES	\$
	FOR EXPENSES	\$
	FOR TRANSCRIPT	\$
TOTAL CLAIM		\$

I swear and affirm the correctness of above statements.

SIGNATURE OF CONTRACTOR/PAYEE

Date

SIGNATURE OF ATTORNEY or Clerk of Court

Date

AMOUNT CERTIFIED APPROVED

\$

VOUCHER NUMBER

134718

PERSON OR ORGANIZATION

TN-13-5403790

Southern District Court Reporters  
U. S. Courthouse  
Foley Square, New York

ZIP CODE 10007

ADDRESS

AT THE TIME OF AUTHORIZATION PLEASE TYPE OR PRINT CLEARLY THE NAME OF PERSON OR ORGANIZATION PROVIDING SERVICE (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

# AUTHORIZATION

TO PAY FOR EXPERT OR OTHER SERVICE

IN THE UNITED STATES OF AMERICA, IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA, IN THE CASE OF

**United States vs. Thomas J. Carroll et al.** **Southern District of N. Y.**  
**Foley Square, New York**

LOCATION NUMBER

**32501**

PROCEEDING (describe briefly)

**Trial - Daily**

- 1 ☒ Defendant Adult
- 2 ☐ Defendant Juvenile
- 3 ☐ Appellant
- 4 ☐ Probation Violator
- 5 ☐ Parole Violator
- 6 ☐ Habeas Petitioner
- 7 ☐ 2255 Petitioner
- 8 ☐ Material Witness
- 9 ☐ Other (Specify below)

DOCKET NUMBERS

Magistrate

District Court

**73 Cr. 855**

Court of Appeals

VOUCHER NUMBER

**134717**

PERSON REPRESENTED (show full name & status, & check box - )

**Robert L. Rippy**

Name already appears as ☐ PI or as ☒ Of above

## ATTORNEY'S STATEMENT

As the attorney for the "person represented" who is named above, I hereby affirm that: (1) the services or expenditures described in the section to the right are necessary to an adequate legal representation or defense in this case, and (2) the "person represented" affirms that he or she is unable to pay for the cost of these services. I therefore request authorization to obtain or incur them at the cost of the United States.

**Richard P. Harfetz, Esq.**  
*Pro Se*

ATTORNEY'S SIGNATURE Date

SUCH SERVICES TO BE PROVIDED BY

NAME  
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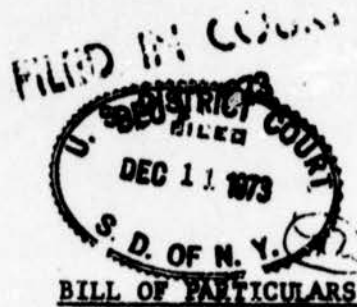
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA :

-v- :

THOMAS JOSEPH CARROLL, et al., :

Defendants. :

73 Cr. 855

73 Cr. 972 (CM)

The United States of America, by Paul J. Curran,  
United States Attorney for the Southern District of New York,  
John J. Kenney, Assistant United States Attorney, of counsel,  
for its supplemental Bill of Particulars in the above  
entitled action, states as follows:

1. The Government presently knows the following  
named persons to be co-conspirators who are not named in the  
indictment either as a co-conspirator or as a defendant:

(A) James Dixon

(B) Carlton Boyd

(C) Leon Rogers

Dated: New York, New York

December 10, 1973

Yours, etc.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

By: *John J. Kenney*

JOHN J. KENNEY

Assistant United States Attorney  
Office and Post Office Address:  
United States Courthouse  
Foley Square, New York, N.Y. 10007  
Telephone: (212) 264-6425

22

JJK:cf  
73-1865

137a

TO: Michael P. DiRenzo, Esq.  
15 Columbus Circle  
New York, N. Y.

Frederick P. Hafetz, Esq.  
60 East 42nd Street  
New York, N.Y. 10017

Donald Hopper, Esq.  
29-27 41st Avenue  
Long Island City, New York

John F. Martin, Esq.  
Suite 912  
342 Madison Avenue  
New York, New York

DEC 11 1973

138a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

S. D. OF N. Y.

*Filed in Court*  
*12-11-73*

In the Matter of :

CHESTER CRAWFORD	:	ORDER
A WITNESS AT THE TRIAL OF	:	73 Cr. 855
UNITED STATES v. THOMAS	:	73 Cr. 972
JOSEPH CARROLL, et al.	:	(CMM)
73 Cr. 855; 73 Cr. 972	:	

----- x

Paul J. Curran, United States Attorney, for the Southern District of New York having on this date made written and oral application for an order compelling Chester Crawford to testify and produce evidence at the trial of United States v. Thomas Joseph Carroll et al. in the United States District Court for the Southern District of New York, pursuant to Title 18, United States Code, Sections 6002 - 6003; and

2. The said Chester Crawford on December // , 1973 having declined to answer questions at said trial on the ground that his answers might tend to incriminate him and the facts surrounding the robbery of one Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973, while not the subject matter of the present indictments, being relevant to the issues herein; and

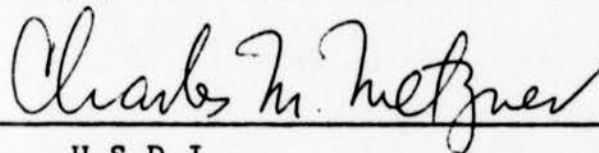
3. It being the judgment of the United States Attorney that the testimony or other information from Chester Crawford may be necessary to the public interest; and

4. The aforesaid application having been made with the approval of the Assistant Attorney General in

charge of the Criminal Division of the Department of Justice, pursuant to the authority vested in him by 18 U.S.C. § 6003 and 28 C.F.R. 0.175; it is

ORDERED pursuant to 18 U.S.C. §§6002 and 6003 that the said Chester Crawford is hereby ordered and compelled to give testimony or provide other information as to matters about which he may be interrogated at said trial but limited to those facts surrounding the robbery of DiGeorgio on March 22nd 1973 in Secaucus.

IT IS FURTHER ORDERED that pursuant to the immunity provisions of Title 18, United States Code, Section 6002-6003, no testimony or other information which said Chester Crawford produces in obedience to this Order or any information directly or indirectly derived from such testimony or other information may be used against said Chester Crawford in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.



U.S.D.J.

Dated: New York, New York

December // , 1973



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:

In the Matter of	:	APPLICATION FOR
	:	<u>IMMUNITY</u>
CHESTER CRAWFORD	:	18 U.S.C. 6002-6003
A WITNESS AT THE TRIAL OF	:	
UNITED STATES v. THOMAS	:	
JOSEPH CARROLL et al.	:	
73 Cr. 855, 73 Cr. 972	:	

----- x

Paul J. Curran, United States Attorney for the Southern District of New York, hereby makes application for an order instructing Chester Crawford to testify and provide other information pursuant to the provisions of Title 18, United States Code, Sections 6002- 6003 and respectfully alleges as follows:

1. Chester Crawford will appear as a witness at the trial of United States v. Thomas Joseph Carroll et al. 73 Cr. 855, 73 Cr. 972 which commenced on December 10th, 1973 in the United States District Court for the Southern District of New York. Indictment 73 Cr. 855 charges the defendants Carroll, Vincent McCloskey a/k/a "Mike" and Robery Rippey a/k/a "Ripp" with conspiring to rob a United States mail truck, murdering the guard on the truck and assaulting and wounding the driver in violation of Section 2, 371, 1111, 1114 and 2114, Title 18, United States Code. Indictment 73 Cr. 972 charges William McCloskey a/k/a "Billy" with identical crimes. The indictments have been joined for trial.

2. The government seeks to elicit testimony as to the armed robbery of Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973. These facts are material and relevant to the

trial of the aforementioned case although they are not the subject of the indictment herein. It is presently anticipated that in response to questions concerning this matter Chester Crawford will invoke his constitutional privilege against self-incrimination and refuse to answer.

3. This application for immunity is being made in good faith, with the approval of Henry E. Petersen, Assistant Attorney General of the United States, in the belief that the witness can give important testimony which will be pertinent to the trial of Thomas Joseph Carroll and others and necessary to the public interest. A copy of the letter from the Assistant Attorney General expressing such approval is attached hereto.

WHEREFORE, the United States of America requests the Court to order Chester Crawford to answer the questions which he refuses to answer, and to testify and give information relating to all matters pertinent to the robbery of said Rocco DeGeorgio on March 22nd, 1973, pursuant to the provisions of Title 18, United States Code, Sections 6002- 6003.

Respectfully submitted,

*Paul J. Curran*

---

PAUL J. CURRAN  
United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

CHESTER CRAWFORD : AFFIDAVIT  
A WITNESS AT THE TRIAL OF :  
UNITED STATES v. THOMAS :  
JOSEPH CARROLL et al. :  
73 Cr. 855, 73 Cr. 972 :

----- x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. KENNEY, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney  
for the Southern District of New York, and am familiar  
with the above matter.

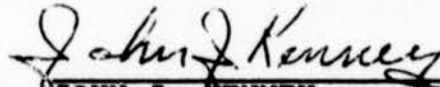
2. This affidavit is submitted in support of  
the application for an order directing Chester Crawford  
to answer certain questions.

3. Chester Crawford, and his attorney Jay  
Gold, Esq. have indicated to affiant on several occasions  
that, if questioned as to the facts of the robbery of  
Rocco DiGeorgio on March 22nd, 1973, he would claim his  
fifth amendment privilege and refuse to testify. The  
government has reason to believe that Chester Crawford,  
when called as a witness at the present trial, will  
claim the fifth amendment privilege when questioned as to  
the facts of said robbery. Said facts are relevant to the  
issues to be tried in the present case.

4. This application for immunity is made with the approval of the designated Assistant Attorney General of the United States, Henry E. Petersen, who is in charge of the Criminal Division of the Department of Justice and the United States Attorney for the Southern District of New York.

5. This application for immunity is based on the belief that the testimony and other information sought is necessary and material to the trial of Thomas Joseph Carroll and others and may be necessary to the public interest.

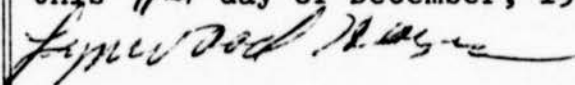
6. This application for immunity is made in good faith.



JOHN J. KENNEY

Assistant United States Attorney

Subscribed and sworn to before me  
this 11<sup>th</sup> day of December, 1973.



LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-1720825  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975



144a

ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION

Department of Justice  
Washington 20530

U.T.D.  
AIR. KENNEY

73-1865

Mr. Paul J. Curran  
United States Attorney  
New York, New York

Re: United States v. Thomas Joseph Carroll,  
Robert Rippy, Vincent McCloskey,  
and William McCloskey

Dear Mr. Curran:

Your request for authority to apply to the United States District Court for the Southern District of New York for an order or orders requiring Chester Crawford to give testimony or provide other information pursuant to 18 U.S.C. 6002-6003 in the above matter and in any further proceedings resulting therefrom or ancillary thereto is hereby approved pursuant to the authority vested in me by 18 U.S.C. 6003 and 28 C.F.R. §0.175.

Sincerely,

*Henry E. Petersen*

HENRY E. PETERSEN

Assistant Attorney General

*By Kevin P. Dratzen*

*Dep. Asst. Atty. Gen.*

*(pursuant to 28 C.F.R. 1.1)*



October 4, 1973

Michael P. DiRenzo, Esq.  
15 Columbus Circle  
New York, N. Y.

United States v. Carroll, et al.  
73 Cr. 855

Dear Mr. DiRenzo:

I am enclosing a copy of a letter from your client, Thomas J. Carroll, which was received by Judge Metzner today. The Judge has asked that you get in touch with Mr. Carroll concerning the various allegations he has made regarding your representation of him in this case.

Very truly yours,

Norman C. Kleinberg  
Law Clerk

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September 27, 1973

HONORABLE CHARLES METZNER  
UNITED STATES DISTRICT JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RE: UNITED STATES OF AMERICA  
AGAINST  
THOMAS J. CARROLL S73 CR 606

Dear Sir:

On the 17th of September 1973, I went before you to start trial. Up until this time, from June 13th 1973, I have been held at The Federal House of Detention, in segregation.

I have been kept separated from my co-defendants, virtually incommunicado.

I was told it was by order of the United States Attorney's office, that they had requested the separation.

The first ten days of August, I was shipped to the Federal penitentiary at Danbury, Connecticut. Even though I have not yet been tried for any crime. A move I believe with designs to prevent me from preparing my defense. I complained to the authorities there until I was sent back to West Street, where I was returned to segregation.

I felt confident in proving my innocence, because four of the defendants in my case, who made a deal with the U.S. Attorney, to testify against me, did not know me, and could not identify me.

Firmly knowing this to be true, I had two of my brothers come to Court. I asked my attorney to have them seated at the table with me, pursuant to asking the defendants, testifying against me, to pick me out. However, much to my surprise, just as my trial was to begin, the government came up with a second superseding indictment. Only to have me identify myself, to all those who did not know me. I then complained to my attorney, to protest, but no objection were made. Instead myself and co-defendant Mr. Rippey were removed from the Court room, and denied hearing the proceedings of the Court.

I sincerely believe that the superseding indictment, was set up by the government for the sole purpose of identifying me, to the two men who admittedly committed the crime, and made a deal with the government for thirteen years, as they so boasted at the first indictment. "The man promised them thirteen years, so they were going to do whatever he told them, and they did not care who got burnt."

The government's claim that the superseding indictment was to add the name of John Turner to the indictment, was just an excuse to have me identified. He has been known to them quite some time, when he was out on bail, why then wasn't he added to the indictment, in June, July, or August, why five minutes before my trial was to begin?

I believe Mr. Chester Crawford, the brother of the man who has put a claim in for the reward in this case (both co-defendants who made deals with the United States Attorney) told the government attorney that his witnesses could not identify me. Having full knowledge that Mr. Myers, and Mr. Mann were put in segregation, overnight with me, and did not know who I was. Under these circumstances beyond my control, I don't see how I can possibly get a fair trial.

The U.S. Attorney knows damn well I was not present when the crime was committed, because he knows I was under surveillance at the time, and have been for at least ninety days prior to that time. But to back up their boast, that they were going to have me off the streets by the end of the summer, they have made deals with most of the co-defendants to testify against me.

The agents have intimidated and threatened people, who I had coming to court to testify, as to my whereabouts on the day the crime was committed.

In the past, federal agents have intervened in state cases concerning me. In March 1973, in the city of Elizabeth, New Jersey, I was picked up at Fort Newark while sitting in my car, I was charged with being a disorderly person, and possession of a weapon. The weapon found some time later in another car some place else. There, they lied to the judge, told him that they were going to bring hijacking charges against me, and had him set a fifty-thousand dollar bail on me. After the judge had seen no charges were to be filed, he lowered the bail.

Prior to this, in January 1973, FBI agents led by Mr. Kelly, unlawfully broke into a garage in New York City, under the assumption that there was a stolen truck inside. There, they admitted that there was nothing to concern them, after confiscating all my personal papers, keys, etc.,. So they had the New York police charge me with stealing a car that was loaned to me, and a pair of old expired license plates. ~~The~~ detectives remarks were that the FBI was pushing it, and were going to make a report on how they handled the case. The case was dismissed. However, they had one of the defendants fired from his job by the New Jersey State ABC because he was on probation.

The agents continuously came to court up to the 27th of March, when the case was dismissed. On one occasion, the 26th of January, or the 5th February 1973, five cars of FBI agents followed us from court in New York City to New Jersey, when somehow they lost us in traffic, they threatened the barmaid in Two Guys Tavern because she did not know where we were. They also offered one of the defendants fifteen-thousand dollars a year if he could help them put me in jail.

My home, and my home phone has been bugged as long as I can remember. Although both my phone and my mother's phone numbers are unlisted. My wife, and my mother both have received threatening calls, calling them murderers etc. Although my mother had her phone number changed, the day it was changed, before anyone had the new number, she received one of these calls. Who else but the government agents who were eavesdropping on the phone to get the number as soon as it was changed.

I would like to point out that my mother lives in a different town than I do. Also, that all of our mail is intercepted and read by the postal inspectors. Not only my civil rights, but the rights of my friends and relatives have been violated by the government agents.

I do not understand why these people are so bent on trying to put me away for the rest of my life. I have no money; my wife had to sell our livingroom set, and most of our personal belongings, to get money for food and try to pay a few bills. At present, the American Express Co. has a judgment to take the rest of our belongings for the unpaid bills. We have borrowed from everyone in the family, until there is no one left to borrow from, trying to overcome these troubles. I have not been able to pay my attorney any money as yet. I was expecting money from an accident I had three years ago, but since this trouble they withdrew their offer. Consequently, my attorney has paid money out of his pocket and has not been reimbursed.

There were motions that should have been made but were not, because I do not have the money or the know how. And can not even afford to hire an investigator. When I call my attorney he is reluctant to come, because he has not been paid. I do not blame him. But I have only seen him once in August for about ten minutes. Then five minutes before my trial was to begin, September 17th. I have not seen him since, although he promised to see me later that day. I called him to get an opinion on writing this letter, but he has not come as yet. In June and July I saw him several times, but working without pay makes a man lose interest. I do not believe in asking for charity, I have worked hard all my life for everything I have. If you want proof, you will find I was issued a coast-guard pass when I was thirteen-years old, to work on the New York docks (Pier 7 East River). I have been working every since, as a construction worker and a truck driver. It is just that all this trouble has kept me broke.



*Thousand*

The two-hundred dollar bail set by the Court, represents more money than I have made in my entire life time, which makes it the same as no bail, a move to keep me incommunicado and to prevent me from establishing my innocence. It is little wonder that the government wins ninety-eight percent of the cases in federal court.

Mr. McClusky has informed me that you wrote and told him if he wanted his bail reduced, he knew what he had to do. This has made me reluctant to ask the Court for aid. But I find myself with no other alternative. If the Court could help me, I would appreciate it.

I would like to get financial help to pay my attorney. I would like a copy of the grand jury minutes, a copy of the arrest warrant (the one they showed me where names were crossed out), a copy of any statements made by the people involved, minutes of both superseding indictments, minutes of all proceeding, known and unknown to me. And the authorization to hire an investigator, and anything that you as a judge, who is more knowledgeable may deem necessary for me to get a fair trial.

I also can not understand why myself and Mr. Rippy were taken out of the court room, and not allowed to hear what was going on in regard to the tapes that were offered in evidence, etc.

I feel that seeing we are the only two being tried, we should have been allowed to know what was happening along with the remaining six defendants, who were permitted to plead guilty to lesser charges. I can not help but feel that there is a personal vendetta against me here. Even Mr. Rippy who has chosen to prove his innocence under the threat of a life sentence, was offered a deal of pleading to a charge with a five year maximum sentence.

I apologize to you for taking up so much of your valuable time with this letter, however, I am fighting for my life, so I must seek help anywhere I can get it. Upon necessity I feel that I can substantiate the facts here written.

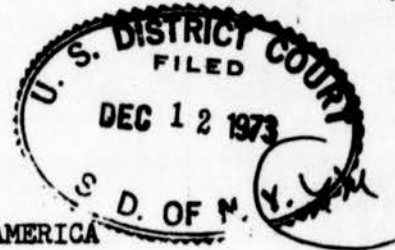
Thank you for your kind consideration, I remain:

Respectfully yours,

  
THOMAS J. CARROLL

In Mail Recd 12/10/73  
NK  
DECEMBER 5, 1973. 149a

HONORABLE CHARLES M. METZNER  
UNITED STATES DISTRICT JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT of NEW YORK  
UNITED STATES COURTHOUSE  
FOLEY SQUARE NEW YORK NEW YORK



RE : UNITED STATES OF AMERICA  
against  
THOMAS J. CARROLL 73 CR 855

Your Honor:

Dear Sir, This will be the second letter I am writing you in my attempt to get the Court to assist me financially, that is for the defense of my case. Since then I have asked my attorney, Mr. Derenzo about forma pauperis, he has informed me that I cannot file for forma pauperis because I own my own home. However, the home is in my wife's name as well as mine, and it has a 30 year mortgage on it. There is a lien against it from the First National Bank of Kearney, N.J. plus one from American Express Company as well as one from Hess Fuel Oil Company. I owe \$1000.00 to Beneficial Finance Co. and also to Local Finance Co. Plus the house is up for bail on a N.J. case. This house in mention is falling apart from lack of repairs while I'm being held in here in lieu of \$ 200,000.00 "RANSOM" by the Government! As I have told your Honor before, I have not given my counsel ten cents on this case, I haven't even been able to return his out of pocket expenses which your Honor knows adds up to a tidy sum. Everytime I send to the Court for legal papers on my case I am forced to beg money from people in my family.

The Court has certainly used the technicality of the law, to keep me from getting a fair trial, I cannot reach my witnesses from in here, I cannot get motions filed that I know I need filed, I cannot hire an investigator which is "crucial" to an adequate defense especially in a homicide case. I have been running my poor wife ragged trying to help me. Of recent date she was involved in an automobile accident of recent date and is under a doctors care. We will probably lose the god damn house anyway! She has no income and people are getting tired of taking bread off of their own table to pay the mortgage payments for her. And as your Honor is well aware, I have no income, thanks to the \$ 200,000.00 "RANSOM" that has kept me here in this lice infested, overcrowded, antiquated, rodent & roach farm for the past six months. My life insurance has lapsed, I've lost 16 years of benefits from the Teamsters Union. Good old America, instead of investigating the Water-gate situation, Congress should investigate the Justice Department. Because of my being a pauper I don't even have the funds to appeal my bail reduction denial.

However, it is interesting to know that the Court gave some of my co - defendants bails of 15,000.00 and 35,000.00 because they plead guilty. I guess that's why your Honor told McClusky: "If you want a bail reduction you know what you have to do!" That was before they drove him out of his mind!

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But when a man professes his innocence he is held by the Government in a so-called bail which in effect the Court knows is a ransom and is tantamount to "NO BAIL" at all, tell me this isn't a direct violation of my Constitutional Rights as guaranteed by our Constitution, one of our most basic and foremost rights, and the Southern District Court of New York has "RAMPED" me of this right as well as the other rights I have mentioned, and why your Honor ????? "Because I have made a plea of not guilty and want a fair and impartial trial before my peers!" HA HA, what a mockery of Justice, no wonder the woman is blindfolded on the scales of Justice, if she wasn't she would have a stroke if she saw the way the Courts treat defendants such as myself! It proves to me that the Courts are pro-Government! There is no hope for me to receive any justice from the Court, they have already spelled that out to me loud and clear by their actions. I know I will never receive "law" from the Court. As of this day it is still very vague to me to know exactly what I am charged with ? Conspiracy, did I commit the crime, or was I an accessory ? I'm sure the Government will let me know when the trial starts! I don't really even know why we're having a trial, why not just send me a sentence ? The indictment isn't too clear that's for sure. I'm also sure the Court knows that I haven't been able to adequately defend myself and prepare a proper defense. Thanks again to the good old Government keeping me incommunicado over here and broke and unable to function and prepare a proper defense. Like I told you in my last letter: No wonder the Government wins 98 % of their cases, HA HA, what a miserable joke! I wonder how many of them they win by the threats and the plea-bargaining, what makes me laugh is the Government can make all kinds of deals and promises, even pay money for favors and they have the audacity to call it "plea-bargaining!"

Let me try it and I'd have another charge! Yet I'm suppose to be part of our Government. Answer one question for me: What makes it legal for the Government and not the defendant ? We are "suppose" to be innocent until proven guilty, HA HA! But yet the U.S. Attorneys Office gets everything they want and the defendants are held incommunicado. Unable to help themselves. If this isn't a police State action, I don't know the meaning of the word. I haven't even been given the right to challenge the selection of the grand jury, I'll bet half of them were postal Department employees, or some type Government employees!

In closing I would like to add, the last time I wrote your Honor a letter, your Honor sealed my letter and added it to my case, well this time please don't bother, as I am sending the Clerk of the Court a copy and I am instructing him to make it part of my Court Docket sheet, this way it will always remain part of the open public record. Trusting this is satisfactory and hoping your Honor tempers justice with mercy, I remain,

"YOURS IN CUSTODY"  
( in lieu of the 200,000.00 RANSOM )

*Thomas J. Carroll*

Thomas Joseph Carroll a/k/a 78729-158

cc: Clerk of the Court  
cc: TJC

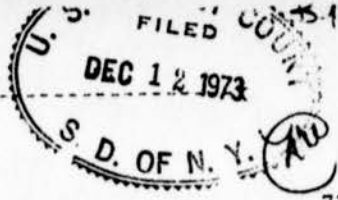
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack",  
VINCENT McCLOSKEY, a/k/a "Mike", ROBERT RIPPY  
a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and GODFREY MATTHEWS MANN,

Defendants



151a

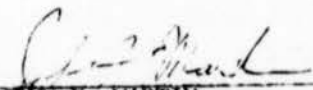
73 CR 855 (CMM)

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed memorandum, a motion will be made at this court before the Hon. Charles M. Metzner, USDJ, on December 12, 1973 at 10:00 in the forenoon thereof, or as soon thereafter as counsel can be heard for an order preventing the admission into evidence by the prosecution of any other criminal acts of the accused, and more particularly, preventing the introduction into evidence in this case of any and all facts and testimony relating to an alleged armed robbery of one Rocco Di Georgio outside the Plaza National Bank in Secaucus, New Jersey on March 22, 1973.

Dated: New York, N. Y.  
December 12, 1973 .

Yours, etc.,

  
JOHN F. MARTIN  
Attorney for McCloskey  
342 Madison Avenue  
New York, N. Y. 10017  
(212) 279-6995

TO:

JOHN J. KENNEY  
Assistant U. S. Attorney



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

152a

-----x  
UNITED STATES OF AMERICA

73 CR 855 (LMM)

vs.

MEMORANDUM

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a "Jack",  
VINCENT McCLOSKEY a/k/a "Mike", ROBERT RIPPY  
a/k/a "Ripp", CHESTER CRAWFORD, PAUL CRAWFORD,  
TERRENCE DEWEY MYERS and GODFREY MATTHEWS MANN,

Defendants  
-----x

STATE OF NEW YORK )  
                              ) ss:  
COUNTY OF NEW YORK)

STATEMENT OF FACTS:

In the opening statement by John J. Kenney, the U. S. Attorney in this action, he indicated that he was going to introduce into evidence on this trial, evidence of alleged illegal acts including a bank robbery in New Jersey some two weeks prior to the incident on which this indictment was predicated.

In an application in support of an order signed by this court on December 11, 1973, granting limited immunity to Chester Crawford, Paul J. Curran, Esq., U. S. Attorney, indicated that the government seeks to elicit testimony as to the armed robbery of Rocco Di Georgio outside the Plaza National Bank in Secaucus, New Jersey on March 22, 1973.

LAW AND SUPPORT OF MOTION:

Evidence of other alleged criminal acts of the defendant VINCENT MC CLOSKEY should not be permitted into evidence.

The rule is well settled that the prosecution may not introduce evidence of other criminal acts of the accused unless the evidence is substantially relevant for some other purpose than to show a probability that he committed the crime on trial because he is a man of criminal character. McCormick, Evidence, Section 157 (1954 ed.) A more detailed description of this general rule of exclusion is to be found in 1 Wigmore, Evidence, Section 193-194 (3rd. ed. 1940).

As Wigmore points out, evidence of prior crimes is objectionable not in so much as a matter of logic, as it undoubtedly is somewhat probative, but as a matter of social policy because the Jury is more likely to give it more weight than it deserves and might decide that the defendant deserves

to be punished because of the past crime without regard to whether he is guilty of the crime currently charged. 1 Wigmore, Evidence, Section 193-194 (3rd ed. 1940)

The rule is universal that the prosecution may not resort to the introduction of any evidence, the purpose of which is to establish defendant's evil character or specific criminal acts other than those criminal acts with which defendant is charged in the Information or Indictment. People v. Zackowitz, 254 NY 192; Michelson v. U. S., 335 U.S. 469.

It is submitted that the showing of similar criminal acts necessarily conveys to the jury the impression that the defendant is a "bad guy" and that evidence of prior crime has direct bearing as to his guilt or innocence for the crime charged in the Indictment. Precautionary statements by the Court to the Jury are meaningless. "The naive assumption that prejudicial effects can be overcome by instructions to the Jury . . . all practising lawyers know to be unmitigated fiction." Krulewitch v. U. S., 336 US 440, 453, concurring opinion Jackson. Mr. Justice Jackson's assessment has received support from perhaps the most empirical study of Jury behavior that has been attempted; see Kalven and Zeisel, The American Jury, 127-130; 177-180.

Clearly, presumptions of innocence and requirements of a fair Trial demand that the defendants be only required to defend the crime or crimes charged in the Indictment. Permitting prosecutors to introduce into evidence similar acts on the theory of some contrived issue of identity, intent, common plan or scheme, etc., when no such genuine issue presents itself, is manifestly prejudicial to the defendants. They are then faced with the dilemma of attempting to rebut such other charges or remaining silent as is their constitutional right under the Fifth Amendment to the United States Constitution. It is respectfully submitted that allowing the prosecution to introduce such evidence of other crimes not only violates defendant's constitutional rights to a fair Trial guaranteed in the Fifth Amendment to the United States Constitution but further violates his rights under the Fifth Amendment by reason of the unreasonable pressures which the introduction of such evidence exerts upon him to testify as to explain them away.

The Court is urged to apply the universal rule in this case that a person cannot be convicted of one offense upon proof that he may have committed another, however, persuasive in a moral point of view such evidence

may be. The Courts are aware that it is easier for a Jury to believe a person guilty of one crime if it is/was known to them that he had committed another of a similar character or indeed of any character; but the injustice of such a rule in our Courts is apparent. It would lead to convictions upon the particular charge made by proof of other acts not legally connected with it.

Prior acts have been allowed in limited areas in case of an equivocal act which is unlawful if so intended but not otherwise and which is claimed to have been accidental or ~~done~~<sup>done</sup> through mistake; the evidence of similar facts was admissible to show intent or system to rebut such accident. U. S. v. Milwaukee Refrigeration Transit Co. 142 F 247.

The rule that evidence of other offenses and prior trouble with the law is inadmissible in a criminal prosecution as part of the Government's case against the defendant, has continuously been enunciated in the Federal Courts. Indicative of the cases are U. S. v. McCarthy 470 F 2D 222 and U. S. v. Russell Hines, cited 470F 2nd 225. A photocopy of the Hines case is attached to this memorandum for the court's ready reference.

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Cite as 479 F.2d 222 (1972)

Crime was inadmissible and therefore material to court's decision, defendant was not prejudiced by the testimony and no reversible error was committed. Affirmed.

## 1. Criminal Law §360.1

Evidence of collateral crime unconnected and unrelated to offense charged is inadmissible; such evidence is irrelevant and prejudicial since it ordinarily does not tend to establish the commission by accused of offense charged and its tendency to prejudice the trier of fact outweighs its probative value.

## 2. Criminal Law §254

Less stringent standards govern a bench trial than a jury trial.

## 3. Criminal Law §260.11(6)

In nonjury trial, introduction of incompetent evidence does not require reversal in absence of an affirmative showing of prejudice.

## 4. Criminal Law §260.11(2)

In nonjury trial, presumption is that improper testimonial evidence, taken under objection, was given no weight by trial judge and that court considered only properly admitted and relevant evidence in rendering its decision.

## 5. Criminal Law §260.11(6)

Where trial judge, in nonjury case, finds that testimonial evidence implicating defendant in the arrest for unrelated and unconnected crime was inadmissible and therefore not material to court's decision, defendant was not prejudiced by the testimony and no reversible error was committed.

John R. Jones, Detroit, Mich. (Court appointed), for defendant-appellant.

John Patrick Conley, Asst. U. S. Atty., Flint, Mich., for plaintiff-appellee. Ralph B. Guy, Jr., U. S. Atty., Detroit, Mich., on brief.

The Honorable Rhodes Bratcher, United States District Judge for the Western

Before PHILLIPS, Chief Judge, WEICK, Circuit Judge, and BRATCHER, District Judge.

BRATCHER, District Judge.

This is an appeal by Dennis McCarthy from his conviction on Counts I and IV of a seven count indictment of knowingly and unlawfully selling and delivering depressant or stimulant drugs in violation of Title 21, United States Code, Section 331(q)(2). The trial judge, sitting without a jury, sentenced McCarthy to two years in the penitentiary on each count, to run concurrently.

The sole issue presented by appellant is whether objectionable testimony implicating appellant in the arrest for an unrelated and unconnected crime so prejudiced the trier of fact as to make a fair trial impossible.

McCarthy was tried with co-defendants Talbot and Megdall. Neither McCarthy nor Megdall testified or offered any witnesses in his behalf. However, co-defendant Talbot did elect to testify and also called several witnesses in an attempt to refute the Government's contention that he was one and the same person as a subject called "Scotty". At the trial "Scotty" was identified as the source of supply for the co-defendants.

The objectionable testimony grew out of direct examination by Talbot's attorney of one of his witnesses. The witness, John Whinnie, testified that he was present at a certain address with appellant when appellant was arrested by the police. This arrest occurred at a time subsequent to the alleged violation at issue before the Court. McCarthy's counsel objected; and the Court, after a reasonable inquiry into the purpose of the testimony, sustained the objection and struck the testimony from the record.

[1] Evidence of collateral crime unconnected and unrelated with the offense charged is inadmissible. Such evidence

District of Kentucky, sitting by designation.



is irrelevant and prejudicial since it ordinarily does not tend to establish the commission by the accused of the offense charged and its tendency to prejudice the trier of fact outweighs its probative value. *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968); *United States v. Nemeth*, 430 F.2d 704 (6th Cir., 1970); *United States v. Poston*, 430 F.2d 706 (6th Cir., 1970); and *United States v. Wells*, 431 F.2d 432 (6th Cir., 1970), certiorari denied 400 U.S. 967, 91 S.Ct. 380, 27 L.Ed.2d 388.

[2] Clearly, the receipt of such testimony was improper and had the evidence of which appellant now complains been to the court and a jury, a more serious question would be presented. It is conceivable that the appellant would in such a circumstance be entitled to a new trial. But this was a bench trial and less stringent standards govern.

[3,4] It is well settled that in a non-jury trial the introduction of incompetent evidence does not require a reversal in the absence of an affirmative showing of prejudice. The presumption is that the improper testimonial evidence, taken under objection, was given no weight by the trial judge and the Court considered only properly admitted and relevant evidence in rendering its decision. *United States v. Krol*, 374 F.2d 776 (7th Cir., 1967), certiorari denied, 389 U.S. 835, 88 S.Ct. 46, 19 L.Ed.2d 97; *Fotie v. United States*, 137 F.2d 831 (8th Cir., 1943); *United States v. Dillon*, 436 F.2d 1093, 1095 (5th Cir., 1971); *United States v. Miles*, 401 F.2d 65, 67 (7th Cir., 1968); *Butler v. United States*, 138 F.2d 977, 980 (7th Cir., 1943).

The trial court was cognizant of the rule regarding inadmissibility of evidence which tends to prove or proves the commission of crime wholly disconnected

from the particular crime charged. The trial judge, in ruling on McCarthy's objection to the testimony, expressly stated:

"The Court: it might well be that you could claim some prejudice in the event that this testimony was admitted. And I don't see the probative value, to begin with, and to commit some prejudice to your client for the purpose of letting in this testimony. . . . it might be harmful."

[5] Even if the Court had considered the objectionable testimony in finding McCarthy guilty, this does not automatically constitute reversible error. There was a sufficiency of proof to support the Court's finding in this case in respect of the objected-to testimony. The admission of such evidence is deemed harmless if there is relevant and competent evidence to establish defendant's guilt in absence of the objectionable proof. *United States v. Stanley*, 41 F.2d 514 (7th Cir., 1969), certiorari denied, 396 U.S. 959, 90 S.Ct. 432, 24 L.Ed.2d 423; *United States v. Reeves*, 36 F.2d 469 (2nd Cir., 1965). Here, the trial judge agreed that the testimonial evidence was inadmissible and therefore was not material to the Court's decision. It follows that appellant was not prejudiced by the testimony and no reversible error was committed.

Our holding in this case should not be construed to mean that the reception of wholly incompetent evidence is permissible in a criminal trial had to the Court alone. All trials should be conducted fairly and trial courts should, in good faith, scrupulously attempt to observe well established rules of evidence. It is clear that the trial judge fulfilled his responsibility in this case.

The judgment of the District Court affirmed.

clearly does not tend to establish the commission by the accused of the offense charged and its tendency to prejudice the trier of fact outweighs its probative value. *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968); *United States v. Mcmeth*, 430 F.2d 704 (8th Cir., 1970); *United States v. Poston*, 430 F.2d 705 (8th Cir., 1970); and *United States v. Wells*, 431 F.2d 432 (8th Cir., 1970), certiorari denied 400 U.S. 967, 91 S.Ct. 380, 27 L. Ed.2d 388.

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[5] Even if the Court had considered the objectionable testimony in finding McCarthy guilty, this does not automatically constitute reversible error. There was a sufficiency of proof to support the Court's finding in this case irrespective of the objected-to testimony. The admission of such evidence is deemed harmless if there is relevant and competent evidence to establish defendant's guilt in absence of the objectionable proof. *United States v. Stanley*, 471 F.2d 514 (7th Cir., 1969), certiorari denied, 396 U.S. 959, 90 S.Ct. 432, 24 L. Ed.2d 423; *United States v. Reeves*, 348 F.2d 469 (2nd Cir., 1965). Here, the trial judge agreed that the testimonial evidence was inadmissible and therefore was not material to the Court's decision. It follows that appellant was not prejudiced by the testimony and no reversible error was committed.

Our holding in this case should not be construed to mean that the reception of wholly incompetent evidence is permissible in a criminal trial had to the Court alone. All trials should be conducted fairly and trial courts should, in good faith, scrupulously attempt to observe well established rules of evidence. It is clear that the trial judge fulfilled his responsibility in this case.

The judgment of the District Court is affirmed.

# UNITED STATES of America

**Russell HINES, Appellant**  
No. 75-1312.

United States Court of Appeals,  
Third Circuit.

Argued Sept. 11, 1972

Decided Nov. 28, 1972

Certiorari Denied March 5, 1973.  
See 93 S.Ct. 145.

Defendant was convicted in the United States District Court for the Eastern District of Pennsylvania, John R. Hannum, J., 336 F.Supp. 1034, of armed robbery of a bank, and he appealed. The Court of Appeals, Biggs, Circuit Judge, held that references in testimony of various witnesses to photographs of defendant used in pretrial identification did not deny defendant due process of law on theory references to his photo injected prior criminal record into the trial, nor did introduction of such evidence constitute error in view of fact references to the pretrial photographic identifications were made to buttress in-court identifications, and probative value of such evidence outweighed potentiality for prejudice.

Judgment affirmed.

## 1. Criminal Law — 369.1

Evidence of other offenses and prior trouble with the law is inadmissible in a criminal prosecution as part of the government's case against defendant.

## 2. Criminal Law — 369.2(1)

In determining admissibility of evidence indicating a defendant's criminal record, potential for prejudice to defendant is not sole factor to be considered, but degree of prejudice must be balanced with probative value of the evidence.

## 3. Constitutional Law — 296(1)

## Criminal Law — 369.2(1)

References in testimony of various witnesses to photographs of defendant

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used in pretrial identification did not deny defendant due process of law on theory references to his photo injected prior criminal record into the trial, nor did introduction of such evidence constitute error in view of fact references to the pretrial photographic identifications were made to buttress in-court identifications, and probative value of such evidence outweighed potentiality for prejudice.

## 4. Criminal Law — 1039.1(2)

Where there was a failure to object to an instruction pursuant to applicable rule of criminal procedure, Court of Appeals could take notice of asserted error only if it constituted plain error. Fed. Rules Crim.Proc. rules 30, 52(b), 18 U.S.C.A.

## 5. Criminal Law — 1039.1(5)

Submission of an instruction in regard to inference to be drawn from government's failure to call a witness, to the effect that there were methods of proving former testimony, was not plain error on theory it erased an inference unfavorable to the government, and, in any event, even if charge did erase such inference, defendant was not deprived of substantial rights since no such inference properly could have been drawn.

## 6. Criminal Law — 611.13(1)

Standard of adequate legal services is exercise of customary skill and knowledge which normally prevails at time and place.

## 7. Criminal Law — 1151(2)

Burden is on defendant appealing from a conviction to demonstrate that his counsel gave him inadequate representation.

## 8. Criminal Law — 611.13(6)

Evidence was insufficient to sustain finding that defendant was denied right to effective assistance of counsel through such counsel's failure to call a witness and failure to file a pretrial motion to suppress identification testimony.



Under Am. of Philadelphia, Philadelphia, Pa., for appellant.  
Walter S. Eatty, Jr., Asst. U. S. Atty., Philadelphia, Pa., for appellee.  
Before BIGGS, JAMES ROSEN, and HUNTER, Circuit Judges.

OPINION OF THE COURT

BIGGS, Circuit Judge.  
On September 12, 1969, three men robbed the Wynnefield Avenue Branch of the Girard Trust Bank at gunpoint. The appellant Hines was indicted on four counts charging him with participation in this armed robbery in violation of Title 18, United States Code §§ 2381(a), (b), and (d). A first trial ended in a mistrial when the jury failed to reach a verdict, but on retrial, Hines was found guilty by a jury. This appeal followed.

Hines has raised three issues: (1) whether reversible error was committed by references to a photograph of Hines made by the FBI in pre-trial photographic identifications; (2) whether the trial court erred in instructing the jury concerning the government's failure to call a witness who had testified for the government in Hines' first trial; and (3) whether defense counsel's decision not to file pre-trial motion to suppress identification testimony and his failure to call a witness who had testified for the government in the first trial denied Hines the effective assistance of counsel as guaranteed by the Sixth Amendment. Consideration of these issues requires the affirmation of Hines' conviction.

1. *References to Photographs of Appellant used in Pre-trial Identification.*  
The government's case consisted of testimony of four bank employees who described the robbery. Identified Hines as one of the robbers. A pre-trial photographic identification in which each selected

being that of one of the robbers. An FBI agent was called who described his activities in investigating the case, including the showing of a photo-spread to the witnesses approximately ten days after the robbery. The pre-trial photographic identification was also brought out during the government's opening arguments to the jury. From this Hines argues that the references to his photograph exhibited by the FBI had the effect of injecting his prior criminal record into the trial, as the jury "must have" concluded that the picture of him was a "mug-shot." It is therefore claimed that such references denied Hines due process of law under the Fifth Amendment, or at least constituted prejudicial error as a matter of federal evidentiary law. We will treat the constitutional claim and the evidentiary claim together for we hold that no error was committed; much less one of constitutional magnitude.

[1] It is well established that evidence of other offenses and prior trouble with the law is inadmissible in a criminal prosecution as part of the government's case against the defendant. In *Michelson v. United States*, 325 U.S. 469, 475-476, 69 S.Ct. 213, 218, 93 L.Ed. 168 (1948), the Supreme Court stated the basis of this rule as follows:

"Courts that follow the common law tradition almost unanimously have come to disallow resort by the prosecution to any kind of evidence of a defendant's evil character to establish a probability of his guilt. Not that the law invests the defendant with a presumption of good character, *Greer v. United States*, 245 U.S. 559, 38 S.Ct. 209, 62 L.Ed. 469, but it simply closes the whole matter of character, disposition and reputation on the prosecution's case-in-chief. The state may not show defendant's prior trouble with the law, specific criminal acts, or all name among his neighbors, even

result but did before the opinion was filed.

persuasive that he is by propensity a probable perpetrator of the crime. The inquiry is not rejected because character is irrelevant; on the contrary, it is said to weigh too much with the jury and to so overpersuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge. The overriding policy of excluding such evidence, despite its admitted probative value, is the practical experience that its disallowance tends to prevent confusion of issues, unfair surprise and undue prejudice." (Notes omitted).

It is on this general rule and the recent Pennsylvania Supreme Court decision, *Commonwealth v. Allen*, 448 Pa. 177, 292 A.2d 373 (1972), that Hines places his chief reliance. In *Allen*, the Court held under circumstances substantially the same as those here that as a principle of Pennsylvania's law of evidence, a reference to a defendant's photograph in police possession constitutes reversible error where "a juror could reasonably infer from the facts presented that the accused had engaged in prior

*Michelson*, however, "refers to evidence introduced for the purpose of showing the defendant's evil character and in leading the jury to infer that the defendant was guilty of a particular crime." *United States ex rel. Choise v. Britley*, 400 F.2d 68, 71 (3 Cir. 1972) (Emphasis added). Hines' case therefore does not fall directly within the ambit of *Michelson* for any evidence implicating his prior criminal record was not introduced to show evil character or criminal disposition, but rather to corroborate the witnesses' account of identifications.

This is not to say that references to a defendant's criminal record are proper where *Michelson* does not apply. The policy expressed in *Michelson* has been carried over to other situations, resulting in the general rule that the government may not introduce evidence of a defendant's criminal record in its case-in-chief. *United States v. Gray*, 408 F.2d 257 (3 Cir. 1972).

2. In *Allen*, witnesses also testified concerning a pre-trial photographic identifi-

mention of photographs during direct examination permitted the jury to infer that the appellant had a prior criminal record," the "prejudice thus created" required reversal. *Allen* at 181-183, 292 A.2d at 375-376.

It cannot be denied that in the case at hand the jury may conceivably have inferred the existence of Hines' criminal record from the numerous references to his photograph. Indeed we concede the possibility of some prejudice. But even so, we cannot accept this *Allen* doctrine, for contrary to the principles enunciated in the cited case, admissibility of evidence does not turn on prejudice alone. This fact is crucial in understanding the differences between the approaches followed by the Pennsylvania Supreme Court and this court. As we said in *United States v. Stirone*, 262 F.2d 571, 576-577 (3 Cir. 1959), reversed on other grounds, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960): "[T]he general rule, as stated by most courts, is that evidence of other offenses is inadmissible in a criminal prosecution for a particular crime. The rule is qualified by a number of exceptions stated in terms of

ration. As is the case here, the photographs were not introduced into evidence, nor was the term 'mug-shot' ever mentioned, and the inference to a prior criminal record could only have occurred through the jury's knowledge of the defendant's photograph having been in police possession.

3. See *Barnes v. United States*, 124 U.S. App. 511, 325 F.2d 549, 572 (1963).

[T]he testimony that the police had on hand photographs of the accused might conceivably have led a juror, at least a sophisticated juror, to hypothesize for in more ordinary English, to 'guess' that the accused had a police record.

4. Compare *United States ex rel. Scuderi v. Banniller*, 310 F.2d 729 (3 Cir. 1962), cert. denied, sub. nom. *Banniller v. Scuderi*, 374 U.S. 828, 83 S.Ct. 1948, 10 L.Ed.2d 1031 (1963), with *United States ex rel. Choise v. Britley*, 400 F.2d 68 (3 Cir. 1972).

the capacity of the evidence to prove some specific fact or issue such as intent, plan, scheme or design. But since the range of relevancy, other than for the purpose of showing criminal propensity, is almost infinite, we think the rule may be phrased a little less mechanically. Evidence of other offenses may be received if relevant for any purpose other than to show a mere propensity or disposition on the part of the defendant to commit the crime.

"Of course the trial judge may, in the exercise of his sound discretion, exclude evidence which is logically relevant to an issue other than propensity, if he finds that the probative value of such evidence is substantially outweighed by the risk that its admission will create a substantial danger of undue prejudice." (Citations and notes omitted, emphasis added).<sup>5</sup>

[2] Thus, as we have said, in deciding the admissibility of evidence indicating Hines' criminal record, the potential for prejudice to him is not the sole factor to be considered. Taking into account all the attendant circumstances, we must balance the degree of prejudice with the probative value of the evidence. Hines' reliance on *Allen* is misplaced, since in *Allen* the Court expressly used to utilize a balancing technique, and instead, having found prejudice existed, reversed for the evidence of *Allen*'s criminal record did not fall into any of the exceptions to the general rule of the inadmissibility of prior criminal records (such as common scheme or design).<sup>7</sup> The difficulty with the approach used in *Allen* is that the utiliza-

5. The test for the admissibility of evidence of other offenses as laid down by *Stinson* has been reiterated by this court on numerous instances. See, e.g., *United States ex rel. Choice v. Brerley*, 499 F.2d 68, 71 (3 Cir. 1973); *United States v. Weber*, 437 F.2d 327, 332-333 (3 Cir. 1970); *United States v. Weller*, 385 F.2d 63, 67 (3 Cir. 1967). Accord, *Hirring v. United States*, 328 F.2d 512 (1 Cir. 1964), cert. denied, 377 U.S. 1063, 81 S.Ct. 1030, 12 L.Ed.2d 1062 (1964);

was "more incriminating" than the more ritualized in-court identification. Given the great need to subvert the witnesses' in-court identification, we agree with the court in *Allen* that "[t]he importance that a spouse of the reality of a fair pre-identification weighs with more than in the scales of justice than speculative possibility that the may conjecture [that the] defendant was involved in some other offense."

are not faced with a situation in a "mug-shot" itself was introduced as evidence, as occurred in *Barnes v. United States*, 124 U.S.App.D.C. 318, 41-2d 509 (1965), nor one in which a "mug-shot" was even mentioned as was the case in *United States v. Allen*, 439 F.2d 226 (7 Cir. 1967). Inference of Hines' criminal record, tendency of the identification evidence to prejudice, is much weaker here. It is at most speculative that such evidence could have had any appreciable effect on the verdict of the jury. Then, the probative value of the evidence in question overbalances its potential for prejudice.

*The Government's Failure to Call a Witness*

The government did not call as a witness Mrs. Darlene Brooks, who, along with three other witnesses, had identified Hines as one of the bank robbers. Prior trial on the same charges. The court commented on this fact to the jury in his closing argument. The court charged the jury in this regard as follows: "The law does not require the government to call as witnesses all persons who may have been present at any

6. Another evidence to corroborate identity found in this case, such as fingerprints, clothing worn in the robbery, or other evidence.

7. *United States v. Allen*, 439 F.2d 226 (7 Cir. 1967).

8. *United States v. Allen*, 439 F.2d 226 (7 Cir. 1967).

9. *United States v. Allen*, 439 F.2d 226 (7 Cir. 1967).

who may appear to have some knowledge of the matters in issue at this trial.

"However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

"Mrs. Brooks was not called to testify in this case and Mr. Carson would argue an inference from that that her testimony would be unfavorable; however, this was a decision, presumably, that the Government made, and I would point out that her testimony was recorded and could have been offered, as there are methods of proving former testimony, so that this, in the court's view, is something that you should take into account when Mr. Carson argues, as he did, that there is an inference that the testimony would be unfavorable.

Hines contends that the trial court erred since the charge erased the inference that Mrs. Brooks' testimony would have been unfavorable to the government, an inference which Hines claims he was entitled to.

[4] It must first be pointed out that Hines failed to interpose a timely objection to the charge pursuant to Rule 30 of the Federal Rules of Criminal Procedure.<sup>11</sup> Given the failure to object, this court can take notice of the asserted error only if it constituted plain error (F.R.Crim.P. 52(b)); *United States v. Chicarelli*, 445 F.2d 1111, 13 (Cir. 1971) affecting substantial rights and involved a "manifest miscarriage of

unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection."

12. Rule 52(b) provides: "Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."



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334 F.2d 678, 690 (3 Cir. 1964), cert. denied, 379 U.S. 947, 85 S.Ct. 440, 13 L.Ed.2d 544 (1964).

[5] The charge in question here did not remove the possible unfavorable inference. The trial court merely instructed the jury that in considering the failure of the government to produce Mrs. Brooks as a witness, and the inferences flowing therefrom, they should take into account the fact that there were means of proving her former testimony.<sup>13</sup> The jury could still draw an inference unfavorable to the government, and in effect was only advised to keep in mind that the government did not have it particularly within its power to produce the testimony of Mrs. Brooks. That this is a relevant factor is apparent from *Graves v. United States*, 150 U.S. 118, 121, 14 S.Ct. 40, 41, 37 L.Ed. 1021 (1893): "The rule, even in criminal cases, is that, if a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable."

Moreover, even if the charge did erase an inference unfavorable to the government, which it did not, Hines was not deprived of substantial rights since no such inference properly could be drawn here. The applicability of a "missing witness" inference is based on the "simile proposition that if a party who has evidence which bears on the issues fails to present it, it must be presumed that such evidence would be detrimental to his cause. 2 Wigmore, Evidence § 285 (3d ed.). For obvious reasons of practicality, evidence which would be merely cumulative could not raise such a pre-

13. Were Mrs. Brooks unavailable at the time of trial, her prior testimony could have been introduced under the recorded testimony exception to the hearsay rule. *California v. Green*, 399 U.S. 149, 90 S.Ct. 1090, 26 L.Ed.2d 489 (1970); *United States v. LeSisto*, 329 F.2d 929 (2 Cir. 1964).

369 F.2d 544, 547-43 (1st Cir. 1966). Clearly every absent but producible witness possessing some knowledge of the facts need not be made the subject of the inference. Often all that can be inferred is that the witness' testimony would have been helpful to a party, not that the testimony would have been *adverse*. *Burress v. United States*, 142 U.S.App.D.C. 198, 440 F.2d 226, 233 (1970). The witness must appear to have special information relevant to the case, that his testimony would not merely be cumulative." *McCormick*, Evidence, 249 at 534 (1954); adopted by the court in *Restraint*.

In the case at bar the facts do not justify an inference that Mrs. Brooks' testimony would have been unfavorable to the government's case. But Hines' first trial, Mrs. Brooks made a positive identification of him which was not shaken by vigorous cross-examination. Her description of the robber varied somewhat from that of the other witnesses,<sup>14</sup> and the description she had given to the FBI was of a person four or five inches taller and about 50 pounds heavier than the appellant.<sup>15</sup> These inaccuracies in her description may explain the government's failure to have Mrs. Brooks testify. But in light of her testimony at the first trial which as a whole clearly favored the government, we think it unreasonable to infer that Mrs. Brooks' testimony would have been adverse to the government in the second trial. It is more likely that her testimony would only have been inferior to that of the other four identification witnesses called and thus less helpful to the government. As the court said in *Burress v. United States*, *supra* at 233: "Though he might not have been helpful,

14. Mrs. Brooks stated that the robber was wearing a white coat or butcher's jacket and dark pants (Transcript of First Trial at 26-27) while other witnesses stated he had on white overalls (Transcript of Second Trial at 52, 68, 93).

15. Transcript of First Trial at 52-53.

the government to put him on the stand did not authorize an inference that if he testified he would have done so favorably to the Government." *Id.* at 544. In four other bank employee serving as witnesses to describe the robbery and Hines, Mrs. Brooks cannot be said to have possessed "special information" and her testimony would only have been cumulative.

It was thus not prejudicial by the court's instruction which, as we said, merely advised the jury of a defense counsel's argument concerning an unfavorable inference. If a party intends to argue to the jury for an inference to be derived from the absence of a witness, "an appropriate inference should be given defining for the jury the conditions under which the inference might be properly drawn. . . . by such a practice can the jury be informed sufficiently to intelligently discharge its duty in that regard." *Gass v. United States*, 135 U.S.App.D.C. 11, 416 F.2d 776 (1969).

In view of the foregoing, it is clear that neither plain error nor a miscarriage of justice are even remotely suggested.

#### Effective Assistance of Counsel

6. Hines contends that he was denied his right to effective assistance of counsel as guaranteed by the Sixth Amendment through his trial counsel's failure to call Mrs. Brooks as a witness and failure to file a pre-trial motion to suppress identification testimony.

[T]he standard of adequacy of legal services as in other professional services is the exercise of the customary skill and knowledge which normally prevail at the time and place. *Moore v. United States*, 122 F.2d 730, 736 (3 Cir. 1942) (footnotes omitted). The burden

Hines to demonstrate that his counsel had inadequate representation. *United States v. Varga*, 149 F.2d

not met this burden and that the services rendered on Hines' behalf were well within the range of "normal competence."

The claim of ineffective assistance of counsel based on trial counsel's failure to call Mrs. Brooks as a witness is frivolous. As stated earlier, Mrs. Brooks' testimony at Hines' first trial favored the government's case. Hines' trial counsel clearly acted reasonably in not calling a witness who had earlier positively identified his client as one of the bank robbers.

With regard to the trial counsel's failure to make a pre-trial motion to suppress identification testimony, the issue raised is similar to that presented where an accused's counsel fails to attempt to suppress evidence on possible Fourth Amendment grounds (illegal search and seizure). As was said in *Harried v. United States*, 128 U.S.App.D.C. 330, 389 F.2d 281, 286 (1967): "We reject the notion that it is defense counsel's duty to 'make every motion in the book' in the hope that one may succeed." In *United States ex rel. Boucher v. Reincke*, 341 F.2d 977, 981 (2 Cir. 1965), "[t]here were no circumstances revealed to the Public Defender by Boucher [the defendant] or anyone else which indicated that an illegal search and seizure had been made by the police." The court thus held that the defendant had not received inadequate representation on account of the Public Defender's failure to raise the Fourth Amendment issue, and stated: "The Constitutional requirement of the effective assistance of counsel does not require that subsequent examination disclose that every conceivable avenue of evidence has been totally explored and every possible theory of defense has been pursued to judgment." *Boucher* at 981.

Similarly, *United States ex rel. Watson v. Mazurkiewicz*, 326 F.Supp. 622, 625-626 (E.D.Pa.1971), held that "any normally competent attorney would advise that such a motion be filed if he

were aware that the Fourth Amendment claims would probably succeed or present a close question to the trial court." (Footnotes omitted). Absent facts known to Hines' trial counsel which at least would provide a basis for a belief that a motion to suppress the identification evidence could succeed, we cannot find that his representation was below the standard of normal competence. Effective assistance does not demand that every possible motion be filed, but only those having a solid foundation.<sup>16</sup>

Hines' contentions are without merit, and accordingly, the judgment of conviction will be affirmed.



Byron V. BOONE and Audrey S. Boone,  
Plaintiffs-Appellees,  
v.  
UNITED STATES of America,  
Defendant-Appellant.

No. 75-1432.  
United States Court of Appeals,  
Tenth Circuit.  
Dec. 15, 1972.

Action by taxpayer for income tax refund. The United States District Court for the Northern District of Oklahoma, Edwin Langley, Chief Judge, rendered judgment for taxpayer and the

16. The direct testimony and cross-examination of the government witnesses indicates the fairness of the procedure used in the pre-trial photographic identifications. Transcript of Second Trial at 25, 44-47, 55-56, 70, 97-98, 120-121. Although minor discrepancies between Hines' actual description and the descriptions given to FBI agents by the government witnesses do raise a hint of possibility with regard to the pre-trial

United States appealed. The Circuit Appeals, William E. Doyle, Chief Judge, held that transaction in which shareholders in closely held insurance company sold stock for agreed price by purchasing company from premium income on transferred policies was a sale, entitled to capital gain treatment, where there had been faith bargaining as to price. Buyer sought deferred payment plan because lack of assets for immediate payment. Buyer's primary motivation was preservation of owning assets free and clear after payment, there was real possibility of economic benefit in transaction, after price was in reasonable range, the transaction was not free of risk to buyer.

Affirmed.

1. Internal Revenue § 1221

"Sale" has not been given narrow and technical definition in tax law and has been accorded common and ordinary meaning.

See publication Words and Phrases for other judicial constructions and definitions.

2. Internal Revenue § 109.2

Transaction in which shareholders in closely held insurance company sold stock for agreed price payable by purchasing company from net premium income on transferred policies was a sale entitled to capital gains treatment where there had been good faith bargaining as to price, buyer sought deferred payment plan because of lack of assets for immediate payment, buyer's

circumstances clearly demonstrates that there was "little chance that the procedure utilized led to misidentification." Simmons v. United States, 250 F.2d 277, 282, 88 S.Ct. 967, 971, 19 L.Ed.2d 1216 (1958). See United States v. Hines, 428 F.2d 401, 405 (3 Cir. 1972), for the seven factors to be considered in deciding taxpayer's innocence. In light of these criteria, no substantial basis for a pre-trial motion to suppress identification testimony.

primary motivation was prospect of economic assets free and clear after payment. There was real possibility of economic benefit in transaction, agreed price was in reasonable range, and transaction was not free of risk to buyer. 28 U.S.C.A. § 1291; 26 U.S.C.A. § 109.2 §§ 1201(b), 1222(3).

Internal Revenue § 109.2

Transactions motivated solely and primarily by tax considerations and which merely demand of substantial business transaction are sham.

Internal Revenue § 109.2

Transaction whereby shareholders in closely held insurance company transferred stock for agreed price payable by purchasing company from net premium income on transferred policies was not a sale as to deprive it of capital gains treatment, where shareholders were desirous of transferring stock due to fact it was less productive than it had previously and buyers were anxious to be able to see opportunity to transfer assets without outlay of capital, all parties contemplated tax consequences. 28 U.S.C.A. § 1291; 26 U.S.C.A. § 109.2 §§ 1201(b), 1222(3).

M. Ginsburg, Atty., Tax Div., of Justice (Scott P. Crampton, Atty. Gen., Meyer Rothwacks, Tax Div., Dept. of Justice, and J. Graham, U.S. Atty., of counsel), for defendant-appellant.  
A. Castleberry, Oklahoma City, for H. Savage and James O. Elliott, Okla., on brief, for plaintiffs.

M. WILLIAMS and DOYLE, Judges, and CHRISTENSEN, Judge.

JAM E. DOYLE, Circuit Judge.

A tax refund case in which the facts prevailed and in which the

Chief Judge, United States District Court for the District of Utah, sitting by design.

government seeks reversal. The principal plaintiff-appellee is Byron V. Boone who filed a claim for a tax refund for the year 1964 in the amount of \$46,412.88. Following administrative denial of his claim, he prosecuted an action in the United States District Court for the Northern District of Oklahoma. The jurisdictional basis for the action is 28 U.S.C. § 1291.

The question presented to us is whether the taxpayer, who was a ten percent shareholder in a closely held insurance company, and who, together with the rest of the shareholders, sold his stock for an agreed price which was payable by the purchasing insurance company from the net premium income which was to be received in the future on the transferred insurance policies, was entitled to report his payments as capital gain or ordinary income. The Commissioner's position is that all of this is to be treated as ordinary income.

Sections 1222(3) and 1201(b) of the Internal Revenue Code of 1954 come into play. The former section defines a long-term capital gain as "gain from the sale or exchange of a capital asset held for more than 6 months."

There is no dispute about the fact that the asset, as a stock, had been held for more than six months. However, the Commissioner maintains that the transaction was not in truth a sale because, so he argues, the purchase price was so excessive that it can never be paid and, secondly, that the transaction was solely motivated by considerations of tax avoidance.

These were the contentions in the district court, and again, on appeal, the Commissioner argues that the weight of the evidence supports his arguments. At the same time, he appears to concede that although his chance of success in this and other similar litigation is now remote, that he must nevertheless oppose and protest transactions of this kind

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



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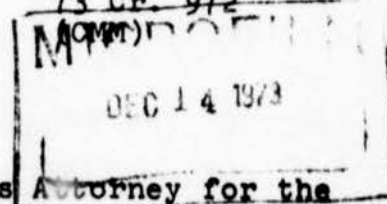
In the Matter of :

PAUL CRAWFORD :

ORDER

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855; 73 Cr. 972 :

73 Cr. 855  
73 Cr. 972



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Paul J. Curran, United States Attorney for the Southern District of New York having on this date made written and oral application for an order compelling Paul Crawford to testify and produce evidence at the trial of United States v. Thomas Joseph Carroll, et al. in the United States District Court for the Southern District of New York, pursuant to Title 18, United States Code, Sections 6002 - 6003; and

2. The said Paul Crawford on December 13 , 1973 having declined to answer questions at said trial on the ground that his answers might tend to incriminate him and the facts surrounding the robbery of one Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973, while not the subject matter of the present indictments, being relevant to the issues herein; and

3. It being the judgment of the United States Attorney that the testimony or other information from Paul Crawford may be necessary to the public interest; and

4. The aforesaid application having been made with the approval of the Assistant Attorney General in



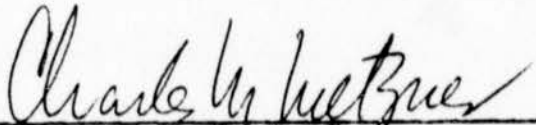
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charge of the Criminal Division of the Department of Justice, pursuant to the authority vested in him by 18 U.S.C. § 6003 and 28 C.F.R. 0.175; it is

ORDERED pursuant to 18 U.S.C. §§ 6002 and 6003 that the said Paul Crawford is hereby ordered and compelled to give testimony or provide other information as to matters about which he may be interrogated at said trial but limited to those facts surrounding the robbery of DiGeorgio on March 22nd, 1973 in Secaucus.

IT IS FURTHER ORDERED that pursuant to the immunity provisions of Title 18, United States Code, Sections 6002-6003, no testimony or other information which said Paul Crawford produces in obedience to this Order or any information directly or indirectly derived from such testimony or other information may be used against said Paul Crawford in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

  
U. S. D. J.

Dated: New York, New York  
December 13, 1973.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of :

PAUL CRAWFORD :

APPLICATION FOR  
IMMUNITY

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855, 73 Cr. 972 :

18 U.S.C. §§  
6002-6003

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Paul J. Curran, United States Attorney for the Southern District of New York, hereby makes application for an order instructing Paul Crawford to testify and provide other information pursuant to the provisions of Title 18, United States Code, Sections 6002- 6003 and respectfully alleges as follows:

1. Paul Crawford will appear as a witness at the trial of United States v. Thomas Joseph Carroll et al. 73 Cr. 855, 73 Cr. 972 which commenced on December 10th, 1973 in the United States District Court for the Southern District of New York. Indictment 73 Cr. 855 charges the defendants Carroll, Vincent McCloskey, a/k/a "Mike" and Robery Rippy, a/k/a "Ripp" with conspiring to rob a United States mail truck, murdering the guard on the truck and assaulting and wounding the driver in violation of Sections 2, 371, 1111, 1114 and 2114, Title 18, United States Code. Indictment 73 Cr. 972 charges William McCloskey, a/k/a "Billy" with identical crimes. The indictments have been joined for trial.

2. The government seeks to elicit testimony as to the armed robbery of Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973. These facts are material and relevant to the

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trial of the aforementioned case although they are not the subject of the indictment herein. It is presently anticipated that in response to questions concerning this matter Paul Crawford will invoke his constitutional privilege against self-incrimination and refuse to answer.

3. This application for immunity is being made in good faith, with the approval of Henry E. Petersen, Assistant Attorney General of the United States, in the belief that the witness can give important testimony which will be pertinent to the trial of Thomas Joseph Carroll and others and necessary to the public interest. A copy of the letter from the Assistant Attorney General expressing such approval is attached hereto.

WHEREFORE, the United States of America requests the Courts to order Paul Crawford to answer the questions which he refuses to answer, and to testify and give information relating to all matters pertinent to the robbery of said Rocco DiGeorgio on March 22nd, 1973, pursuant to the provisions of Title 18, United States Code, Sections 6002-6003.

Respectfully submitted,

*Paul J. Curran*  
\_\_\_\_\_  
PAUL J. CURRAN  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of :

PAUL CRAWFORD : AFFIDAVIT

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855, 73 Cr. 972 :

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STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. KENNEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and am familiar with the above matter.

2. This affidavit is submitted in support of the application for an order directing Paul Crawford to answer certain questions.

3. Paul Crawford, and his attorney Joseph Klempner, Esq. have indicated to affiant on several occasions that, if questioned as to the facts of the robbery of Rocco DiGeorgio on March 22nd, 1973, he would claim his fifth amendment privilege and refuse to testify. The government has reason to believe that Paul Crawford, when called as a witness at the present trial, will claim the fifth amendment privilege when questioned as to the facts of said robbery. Said facts are relevant to the issues to be tried in the present case.

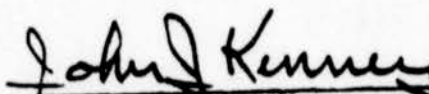
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4. This application for immunity is made with the approval of the designated Assistant Attorney General of the United States, Henry E. Petersen, who is in charge of the Criminal Division of the Department of Justice and the United States Attorney for the Southern District of New York.

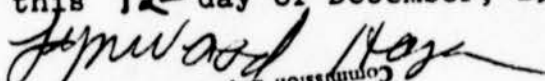
5. This application for immunity is based on the belief that the testimony and other information sought is necessary and material to the trial of Thomas Joseph Carroll and others and may be necessary to the public interest.

6. This application for immunity is made in good faith.

  
JOHN J. KENNEY  
Assistant United States Attorney

Subscribed and sworn to before me

this 12<sup>th</sup> day of December, 1973.

  
LYNWOOD HAYES  
Notary Public, State of New York  
No. 41-1720825  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975



ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION

Department of Justice  
Washington 20530

VTC  
MR. KENNEDY

73-1865

Mr. Paul J. Curran  
United States Attorney  
New York, New York

Re: United States v. Thomas Joseph Carroll,  
Robert Rippy, Vincent McCloskey,  
and William McCloskey

Dear Mr. Curran:

Your request for authority to apply to the United States District Court for the Southern District of New York for an order or orders requiring Paul Crawford to give testimony or provide other information pursuant to 18 U.S.C. 6002-6003 in the above matter and in any further proceedings resulting therefrom or ancillary thereto is hereby approved pursuant to the authority vested in me by 18 U.S.C. 6003 and 28 C.F.R. §0.175.

Sincerely,

*Henry E. Petersen*  
HENRY E. PETERSEN  
Assistant Attorney General

*By Kevin P. [unclear]*  
*[unclear]*

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FILED IN COURT

DEC 14 1973

(SF)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of :

GEOFFREY MATTHEWS MANN :

ORDER

A Witness at the Trial of United : 73 Cr. 855  
States v. Thomas Joseph Carroll, : 73 Cr. 972  
et al., 73 Cr. 855, 73 Cr. 972 : (CMM)

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Paul J. Curran, United States Attorney for the Southern District of New York having on this date made written and oral application for an order compelling Geoffrey Matthews Mann to testify and produce evidence at the trial of United States v. Thomas Joseph Carroll, et al. in the United States District Court for the Southern District of New York, pursuant to Title 18, United States Code, Sections 6002 - 6003; and

2. The said Geoffrey Matthews Mann on December 13, 1973 having declined to answer questions at said trial on the ground that his answers might tend to incriminate him and the facts surrounding the robbery of one Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973, while not the subject matter of the present indictments, being relevant to the issues herein; and

3. It being the judgment of the United States Attorney that the testimony or other information from Geoffrey Matthews Mann may be necessary to the public interest; and

4. The aforesaid application having been made with the approval of the Assistant Attorney General in

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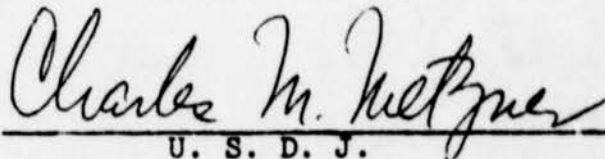
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charge of the Criminal Division of the Department of Justice, pursuant to the authority vested in him by 18 U.S.C. § 6003 and 28 C.F.R. 0.175; it is

ORDERED pursuant to 18 U.S.C. §§ 6002 and 6003 that the said Geoffrey Matthews Mann is hereby ordered and compelled to give testimony or provide other information as to matters about which he may be interrogated at said trial but limited to those facts surrounding the robbery of DiGeorgio on March 22nd, 1973 in Secaucus.

IT IS FURTHER ORDERED that pursuant to the immunity provisions of Title 18, United States Code, Sections 6002-6003, no testimony or other information which said Geoffrey Matthews Mann produces in obedience to this Order or any information directly or indirectly derived from such testimony or other information may be used against said Geoffrey Matthews Mann in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

  
U. S. D. J.

Dated: New York, New York  
December 13, 1973.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of :

GEOFFREY MATTHEWS MANN : APPLICATION FOR  
IMMUNITY

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll, : 18 U.S.C. §§  
et al., 73 Cr. 855, 73 Cr. 972 : 6002-6003

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Paul J. Curran, United States Attorney for the Southern District of New York, hereby makes application for an order instructing Geoffrey Matthews Mann to testify and provide other information pursuant to the provisions of Title 18, United States Code, Sections 6002- 6003 and respectfully alleges as follows:

1. Geoffrey Matthews Mann will appear as a witness at the trial of United States v. Thomas Joseph Carroll et al. 73 Cr. 855, 73 Cr. 972 which commenced on December 10th, 1973 in the United States District Court for the Southern District of New York. Indictment 73 Cr. 855 charges the defendants Carroll, Vincent McCloskey, a/k/a "Mike" and Robery Rippy, a/k/a "Ripp" with conspiring to rob a United States mail truck, murdering the guard on the truck and assaulting and wounding the driver in violation of Sections 2, 371, 1111, 1114 and 2114, Title 18, United States Code. Indictment 73 Cr. 972 charges William McCloskey, a/k/a "Billy" with identical crimes. The indictments have been joined for trial.

2. The government seeks to elicit testimony as to the armed robbery of Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973. These facts are material and relevant to the



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trial of the aforementioned case although they are not the subject of the indictment herein. It is presently anticipated that in response to questions concerning this matter Geoffrey Matthews Mann will invoke his constitutional privilege against self-incrimination and refuse to answer.

3. This application for immunity is being made in good faith, with the approval of Henry E. Petersen, Assistant Attorney General of the United States, in the belief that the witness can give important testimony which will be pertinent to the trial of Thomas Joseph Carroll and others and necessary to the public interest. A copy of the letter from the Assistant Attorney General expressing such approval is attached hereto.

WHEREFORE, the United States of America requests the Courts to order Geoffrey Matthews Mann to answer the questions which he refuses to answer, and to testify and give information relating to all matters pertinent to the robbery of said Rocco DiGeorgio on March 22nd, 1973, pursuant to the provisions of Title 18, United States Code, Sections 6002-6003.

Respectfully submitted,

*Paul J. Curran*

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PAUL J. CURRAN  
United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of :

GEOFFREY MATTHEWS MANN : AFFIDAVIT

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855, 73 Cr. 972 :  
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STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. KENNEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and am familiar with the above matter.


2. This affidavit is submitted in support of the application for an order directing Geoffrey Matthews Mann to answer certain questions.

3. Geoffrey Matthews Mann, and his attorney Robert Mitchell, Esq. have indicated to affiant on several occasions that, if questioned as to the facts of the robbery of Rocco DiGeorgio on March 22nd, 1973, he would claim his fifth amendment privilege and refuse to testify. The government has reason to believe that Geoffrey Matthews Mann, when called as a witness at the present trial, will claim the fifth amendment privilege when questioned as to the facts of said robbery. Said facts are relevant to the issues to be tried in the present case.

4. This application for immunity is made with the approval of the designated Assistant Attorney General of the United States, Henry E. Petersen, who is in charge of the Criminal Division of the Department of Justice and the United States Attorney for the Southern District of New York.

5. This application for immunity is based on the belief that the testimony and other information sought is necessary and material to the trial of Thomas Joseph Carroll and others and may be necessary to the public interest.

6. This application for immunity is made in good faith.

  
JOHN J. KENNEY  
Assistant United States Attorney

Subscribed and sworn to before me  
this 13<sup>th</sup> day of December, 1973.



WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-0394500  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 30, 1975

ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION

Department of Justice  
Washington 20530

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*✓ TEL*  
MR. KENNEY

73-1865

Mr. Paul J. Curran  
United States Attorney  
New York, New York

Re: United States v. Thomas Joseph Carroll,  
Robert Rippy, Vincent McCloskey,  
and William McCloskey

Dear Mr. Curran:

Your request for authority to apply to the United States District Court for the Southern District of New York for an order or orders requiring Geoffrey Mann to give testimony or provide other information pursuant to 18 U.S.C. 6002-6003 in the above matter and in any further proceedings resulting therefrom or ancillary thereto is hereby approved pursuant to the authority vested in me by 18 U.S.C. 6003 and 28 C.F.R. §0.175.

Sincerely,

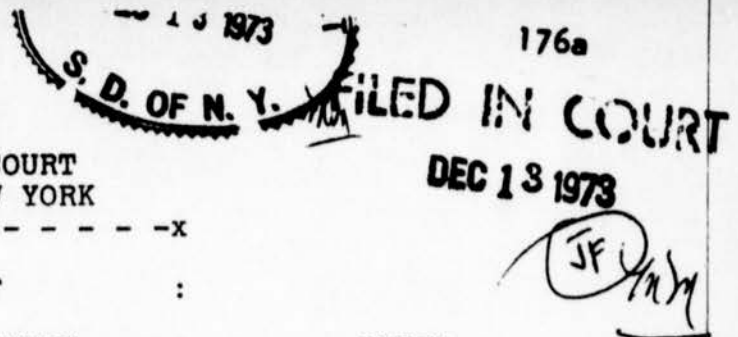
*Henry E. Petersen*  
HENRY E. PETERSEN

Assistant Attorney General

*By Kevin [unclear]*  
*Sup. Dist. Ct. [unclear]*  
*(pursuant to 28 C.F.R. 0.175)*



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n-251



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of :

TERRENCE DEWEY MYERS : ORDER

A Witness at the Trial of United : 73 Cr. 855  
States v. Thomas Joseph Carroll. : 73 Cr. 972  
et al., 73 Cr. 855, 73 Cr. 972 : (CMM)

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Paul J. Curran, United States Attorney for the Southern District of New York having on this date made written and oral application for an order compelling Terrence Dewey Myers to testify and produce evidence at the trial of United States v. Thomas Joseph Carroll, et al. in the United States District Court for the Southern District of New York, pursuant to Title 18, United States Code, Sections 6002 - 6003; and

2. The said Terrence Dewey Myers on December 13 , 1973 having declined to answer questions at said trial on the ground that his answers might tend to incriminate him and the facts surrounding the robbery of one Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973, while not the subject matter of the present indictments, being relevant to the issues herein; and

3. It being the judgment of the United States Attorney that the testimony or other information from Terrence Dewey Myers may be necessary to the public interest; and

4. The aforesaid application having been made with the approval of the Assistant Attorney General in

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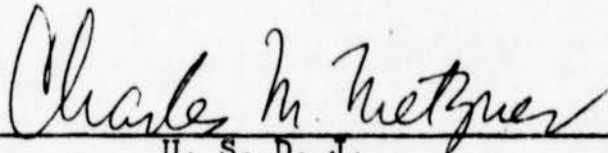
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charge of the Criminal Division of the Department of Justice, pursuant to the authority vested in him by 18 U.S.C. § 6003 and 28 C.F.R. 0.175; it is

ORDERED pursuant to 18 U.S.C. §§ 6002 and 6003 that the said Terrence Dewey Myers is hereby ordered and compelled to give testimony or provide other information as to matters about which he may be interrogated at said trial but limited to those facts surrounding the robbery of DiGeorgio on March 22nd, 1973 in Secaucus.

IT IS FURTHER ORDERED that pursuant to the immunity provisions of Title 18, United States Code, Sections 6002-6003, no testimony or other information which said Terrence Dewey Myers produces in obedience to this Order or any information directly or indirectly derived from such testimony or other information may be used against said Terrence Dewey Myers in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

  
U. S. D. J.

Dated: New York, New York

December 13, 1973.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

178a

- - - - -x

In the Matter of :

TERRENCE DEWEY MYERS : APPLICATION FOR  
IMMUNITY

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll, 18 U.S.C. §§  
et al., 73 Cr. 855, 73 Cr. 972 : 6002-6003

- - - - -x

Paul J. Curran, United States Attorney for the Southern District of New York, hereby makes application for an order instructing Terrence Dewey Myers to testify and provide other information pursuant to the provisions of Title 18, United States Code, Sections 6002- 6003 and respectfully alleges as follows:

1. Terrence Dewey Myers will appear as a witness at the trial of United States v. Thomas Joseph Carroll et al. 73 Cr. 855, 73 Cr. 972 which commenced on December 10th, 1973 in the United States District Court for the Southern District of New York. Indictment 73 Cr. 855 charges the defendants Carroll, Vincent McCloskey, a/k/a "Mike" and Robery Rippy, a/k/a "Ripp" with conspiring to rob a United States mail truck, murdering the guard on the truck and assaulting and wounding the driver in violation of Sections 2, 371, 1111, 1114 and 2114, Title 18, United States Code. Indictment 73 Cr. 972 charges William McCloskey, a/k/a "Billy" with identical crimes. The indictments have been joined for trial.

2. The government seeks to elicit testimony as to the armed robbery of Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973. These facts are material and relevant to the

trial of the aforementioned case although they are not the subject of the indictment herein. It is presently anticipated that in response to questions concerning this matter Terrance Dewey Myers will invoke his constitutional privilege against self-incrimination and refuse to answer.

3. This application for immunity is being made in good faith, with the approval of Henry E. Petersen, Assistant Attorney General of the United States, in the belief that the witness can give important testimony which will be pertinent to the trial of Thomas Joseph Carroll and others and necessary to the public interest. A copy of the letter from the Assistant Attorney General expressing such approval is attached hereto.

WHEREFORE, the United States of America requests the Courts to order Terrence Dewey Myers to answer the questions which he refuses to answer, and to testify and give information relating to all matters pertinent to the robbery of said Rocco DiGeorgio on March 22nd, 1973, pursuant to the provisions of Title 18, United States Code, Sections 6002-6003.

Respectfully submitted,

*Paul J Curran*  
\_\_\_\_\_  
PAUL J. CURRAN  
United States Attorney



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter of :

TERRENCE DEWEY MYERS : AFFIDAVIT

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855, 73 Cr. 972 :  
-----x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. KENNEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and am familiar with the above matter.

2. This affidavit is submitted in support of the application for an order directing Terrence Dewey Myers to answer certain questions.

3. Terrence Dewey Myers, and his attorney Murray Mogel, Esq. have indicated to affiant on several occasions that, if questioned as to the facts of the robbery of Rocco DiGeorgio on March 22nd, 1973, he would claim his fifth amendment privilege and refuse to testify. The government has reason to believe that Terrence Dewey Myers, when called as a witness at the present trial, will claim the fifth amendment privilege when questioned as to the facts of said robbery. Said facts are relevant to the issues to be tried in the present case.

4. This application for immunity is made with the approval of the designated Assistant Attorney General of the United States, Henry E. Petersen, who is in charge of the Criminal Division of the Department of Justice and the United States Attorney for the Southern District of New York.

5. This application for immunity is based on the belief that the testimony and other information sought is necessary and material to the trial of Thomas Joseph Carroll and others and may be necessary to the public interest.

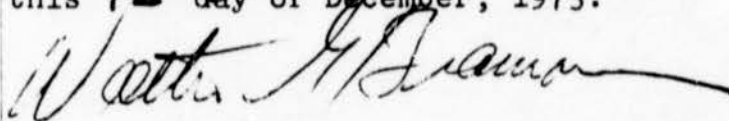
6. This application for immunity is made in good faith.



JOHN J. KENNEY  
Assistant United States Attorney

Subscribed and sworn to before me

this 1<sup>st</sup> day of December, 1973.



WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-0394500  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 30, 1975

182a

Department of Justice  
Washington 20530

*Mr. Kenney*  
MR. KENNEY

73-1865-647

*1/11/42*

Mr. Paul J. Curran  
United States Attorney  
New York, New York

Re: United States v. Thomas Joseph Carroll,  
Robert Rippy, Vincent McCloskey,  
and William McCloskey

Dear Mr. Curran:

Your request for authority to apply to the United States District Court for the Southern District of New York for an order or orders requiring Terrence Myers to give testimony or provide other information pursuant to 18 U.S.C. 6002-6003 in the above matter and in any further proceedings resulting therefrom or ancillary thereto is hereby approved pursuant to the authority vested in me by 18 U.S.C. 6003 and 28 C.F.R. §0.175.

Sincerely,

*Henry E. Petersen*  
HENRY E. PETERSEN  
Assistant Attorney General

*By [Signature] Secretary*  
*Department of Justice*  
*(pursuant to 28 CFR 0.17)*

JJK:lq  
73-1865  
n-309

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

- v -

THOMAS JOSEPH CARROLL, et al.,  
Defendants.

BILL OF PARTICULARS

73 Cr. 855  
73 Cr. 972 (CMM)

The United States of America, by Paul J. Curran, United States Attorney for the Southern District of New York, John J. Kenney, Assistant United States Attorney, of counsel, for its supplemental Bill of Particulars in the above entitled action, states as follows:

1. The Government presently knows the following named persons to be co-conspirators who are not named in the indictment either as a co-conspirator or as a defendant:

(A) Robert Rimmer, a/k/a "Bobby"

(B) Michael Marciano, a/k/a "Mike"

Dated: New York, New York

December 17, 1973

Yours, etc.,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

By:

*John J. Kenney*  
JOHN J. KENNEY

Assistant United States Attorney  
Office and Post Office Address:  
United States Courthouse  
Foley Square  
New York, New York 10007  
Telephone: (212) 264-6425



JJK:lg  
73-1865  
n-309

184a

TO: Michael P. DiRenzo, Esq.  
15 Columbus Circle  
New York, N.Y.

Frederick P. Hafetz, Esq.  
60 East 42nd Street  
New York, N.Y. 10017

Donald Hopper, Esq.  
29-27 41st Avenue  
Long Island City, New York

John F. Martin, Esq.  
Suite 912  
342 Madison Avenue  
New York, New York

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

185a

UNITED STATES OF AMERICA :

- v - :

73 Cr. 855 (CMB)

THOMAS JOSEPH CARROLL, et al., :

Defendants. :

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

Dec 11 3 09 PM '73

JOHN F. MARTIN being duly sworn deposes and says:

1. I am the attorney for defendant Vincent a/k/a 'Mike' McCloskey.

2. GARRETT B. TRAPNELL # 72021-152 born 1/31/30 is now incarcerated at Federal Detention Headquarters, New York City, serving a sentence of life imprisonment for violation of 49 U.S.C. § 1472(1) and (g) and 18 U.S.C. § 924(c)(2).

3. I believe GARRETT TRAPNELL has certain information which will be material and necessary to present to this Court upon the trial of the above named case.

4. This case is now on trial in the United States District Court for the Southern District of New York.

WHEREFORE, I respectfully pray that a writ of habeas corpus ad testificandum issue directing the Warden, Federal Detention Headquarters and the United States Marshal for the Southern District of New York to produce GARRETT TRAPNELL in this Court on Dec. 19, 1973.

JOHN F. MARTIN  
Attorney for Defendant  
Vincent a/k/a 'Mike' McCloskey

Sworn to before me this  
15th day of December, 1973.

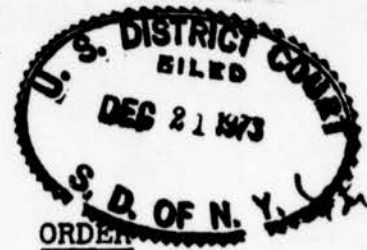
CAREY  
New York  
New York County  
Commissioner Expires March 30, 1975

34

JJK:mel  
73-1865  
n-251

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

186a



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In the Matter of :

JOHN TURNER :

A Witness at the Trial of United : 73 Cr. 855  
States v. Thomas Joseph Carroll, : 73 Cr. 972  
et al., 73 Cr. 855, 73 Cr. 972 : (CMM)

-----x

Paul J. Curran, United States Attorney for the Southern District of New York having on this date made written and oral application for an order compelling John Turner to testify and produce evidence at the trial of United States v. Thomas Joseph Carroll, et al. in the United States District Court for the Southern District of New York, pursuant to Title 18, United States Code, Sections 6002 - 6003; and

2. The said John Turner on December 19, 1973 having declined to answer questions at said trial on the ground that his answers might tend to incriminate him and the facts surrounding the robbery of one Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973, while not the subject matter of the present indictments, being relevant to the issues herein; and

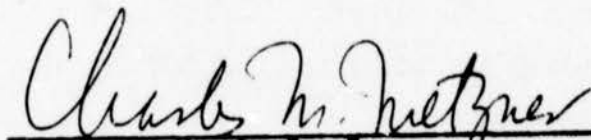
3. It being the judgment of the United States Attorney that the testimony or other information from John Turner may be necessary to the public interest; and

4. The aforesaid application having been made with the approval of the Assistant Attorney General in

charge of the Criminal Division of the Department of Justice, pursuant to the authority vested in him by 18 U.S.C. § 6003 and 28 C.F.R. 0.175; it is

ORDERED pursuant to 18 U.S.C. §§ 6002 and 6003 that the said John Turner is hereby ordered and compelled to give testimony or provide other information as to matters about which he may be interrogated at said trial but limited to those facts surrounding the robbery of DiGeorgio on March 22nd, 1973 in Secaucus.

IT IS FURTHER ORDERED that pursuant to the immunity provisions of Title 18, United States Code, Sections 6002-6003, no testimony or other information which said John Turner produces in obedience to this Order or any information directly or indirectly derived from such testimony or other information may be used against said John Turner in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

  
U. S. D. J.

Dated: New York, New York  
December 19, 1973.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In the Matter of	:	
JOHN TURNER	:	APPLICATION FOR <u>IMMUNITY</u>
A Witness at the Trial of United	:	
States v. Thomas Joseph Carroll,	:	18 U.S.C. §§
et al., 73 Cr. 855, 73 Cr. 972	:	6002-6003

- - - - -x

Paul J. Curran, United States Attorney for the Southern District of New York, hereby makes application for an order instructing John Turner to testify and provide other information pursuant to the provisions of Title 18, United States Code, Sections 6002- 6003 and respectfully alleges as follows:

1. John Turner will appear as a witness at the trial of United States v. Thomas Joseph Carroll et al. 73 Cr. 855, 73 Cr. 972 which commenced on December 10th, 1973 in the United States District Court for the Southern District of New York. Indictment 73 Cr. 855 charges the defendants Carroll, Vincent McCloskey, a/k/a "Mike" and Robery Rippy, a/k/a "Ripp" with conspiring to rob a United States mail truck, murdering the guard on the truck and assaulting and wounding the driver in violation of Sections 2, 371, 1111, 1114 and 2114, Title 18, United States Code. Indictment 73 Cr. 972 charges William McCloskey, a/k/a "Billy" with identical crimes. The indictments have been joined for trial.

2. The government seeks to elicit testimony as to the armed robbery of Rocco DiGeorgio outside the Plaza National Bank in Secaucus, New Jersey on March 22nd, 1973. These facts are material and relevant to the

trial of the aforementioned case although they are not the subject of the indictment herein. It is presently anticipated that in response to questions concerning this matter John Turner will invoke his constitutional privilege against self-incrimination and refuse to answer.

3. This application for immunity is being made in good faith, with the approval of Henry E. Petersen, Assistant Attorney General of the United States, in the belief that the witness can give important testimony which will be pertinent to the trial of Thomas Joseph Carroll and others and necessary to the public interest. A copy of the letter from the Assistant Attorney General expressing such approval is attached hereto.

WHEREFORE, the United States of America requests the Courts to order John Turner to answer the questions which he refuses to answer, and to testify and give information relating to all matters pertinent to the robbery of said Rocco DiGeorgio on March 22nd, 1973, pursuant to the provisions of Title 18, United States Code, Sections 6002-6003.

Respectfully submitted,

*Paul J Curran*

---

PAUL J. CURRAN  
United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In the Matter of :

JOHN TURNER : AFFIDAVIT

A Witness at the Trial of United :  
States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855, 73 Cr. 972 :

- - - - -x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )

JOHN J. KENNEY, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and am familiar with the above matter.


2. This affidavit is submitted in support of the application for an order directing John Turner to answer certain questions.

3. John Turner, and his attorney Jack Kaplan, Esq. have indicated to affiant on several occasions that, if questioned as to the facts of the robbery of Rocco DiGeorgio on March 22nd, 1973, he would claim his fifth amendment privilege and refuse to testify. The government has reason to believe that John Turner, when called as a witness at the present trial, will claim the fifth amendment privilege when questioned as to the facts of said robbery. Said facts are relevant to the issues to be tried in the present case.

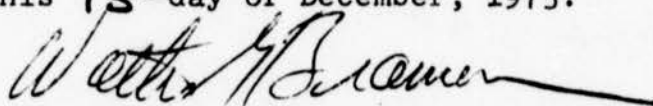
4. This application for immunity is made with the approval of the designated Assistant Attorney General of the United States, Henry E. Petersen, who is in charge of the Criminal Division of the Department of Justice and the United States Attorney for the Southern District of New York.

5. This application for immunity is based on the belief that the testimony and other information sought is necessary and material to the trial of Thomas Joseph Carroll and others and may be necessary to the public interest.

6. This application for immunity is made in good faith.

  
JOHN J. KENNEY  
Assistant United States Attorney

Subscribed and sworn to before me  
this 13<sup>th</sup> day of December, 1973.



WALTER G. BRANNON  
Notary Public, State of New York  
No. 24-0394500  
Qualified in Kings County  
Cert. filed in New York County  
Term Expires March 30, 1975



192a

Department of Justice  
Washington 20530

MR. KENNEY

73-1565 (73-2934)

Mr. Paul J. Curran  
United States Attorney  
New York, New York

Re: United States v. Thomas Joseph Carroll,  
Robert Rippy, Vincent McCloskey,  
and William McCloskey

Dear Mr. Curran:

Your request for authority to apply to the United States District Court for the Southern District of New York for an order or orders requiring John Turner to give testimony or provide other information pursuant to 18 U.S.C. 6002-6003 in the above matter and in any further proceedings resulting therefrom or ancillary thereto is hereby approved pursuant to the authority vested in me by 18 U.S.C. 6003 and 28 C.F.R. §0.175.

Sincerely,

*Henry E. Petersen*  
HENRY E. PETERSEN  
Assistant Attorney General

*By John J. Harrison  
Supt. Dist. Ct. S.D.N.Y.*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- -x  
UNITED STATES OF AMERICA

: 73 Cr. 855

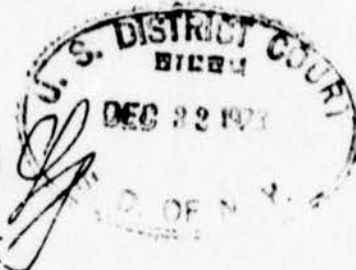
-v-

: DEFENDANT RIPPY'S  
SUPPLEMENTAL REQUEST  
TO CHARGE

THOMAS CARROLL, et al.,

Defendants.

----- -x  
ALTERNATIVE REQUEST FOR CHARGE  
IF REQUESTS NUMBERS 5 AND 6  
ARE DENIED



*Verll*  
In order to convict defendant Rippy of count 2 or count 3, you must find beyond a reasonable doubt that he knowingly participated in a plan to obtain money by means of a hijacking of a truck.

United States v. Alsondo, et al., slip opinion  
on rehearing, pages 5591-2 (2nd Cir., Nov. 19, 1973)

*Denied*  
In order to convict defendant Rippy of count 2 or count 3, you must also find beyond a reasonable doubt that the defendant Rippy knew that the plan to rob - if you find that ~~he~~ he knew of such plan - included within its scope more than a single robbery. Specifically, you must find that defendant Rippy knew that the scope of the plan extended to robberies in addition to that allegedly occurring in Secaucus, New Jersey on March 22, 1973.

REQUEST NO. 1

194a  
*DEA*  
*William*

In order to convict defendant Rippy of Count One, you must find beyond a reasonable doubt that he joined and participated in a plan to commit robbery with specific knowledge that the object of the robbery was a postal mail truck or postal employee.

United States v. Alsondo, et al., Docket  
Nos. 73-1297, 73-1466, 73-1467  
(2nd Cir., July 13, 1973);  
United States v. Crimmins, 123 F. 2d 271  
(2nd Cir., 1941);  
United States v. Gallishaw, 428 F. 2d 760  
(2nd Cir., 1970);  
see Ingram v. United States, 360 U.S. 672 (1959)

195a

REQUEST NO. 2

If you find that defendant Rippy had specific knowledge that a postal truck or employee was the object of the alleged robbery plan but that after learning this fact, he did not participate or commit any act to further such plan, you must find him not guilty of Count One.

United States v. Alsondo, supra;  
United States v. Crimmins, supra.



196a

*Denied*

REQUEST NO. 3

In order to convict defendant Rippy of Count Two you must find beyond a reasonable doubt that he aided and abetted the commission of a robbery of a postal employee with specific knowledge that the object of the robbery was a postal employee.

United States v. Gallishaw, supra.

*Ordinary 192  
Knowledge of general  
as opposed to  
no specific knowledge  
126813*

REQUEST NO. 4

197a

*Denies*

In order to convict defendant Rippy of Count Three you must find beyond a reasonable doubt that he aided and abetted the commission of an assault upon a postal employee with specific knowledge that the object of the assault was a postal employee.

United States v. Gallishaw, supra.

*Drus*REQUEST NO. 5

In order to convict defendant Rippy of Count Two as a joint venturer, you must find beyond a reasonable doubt that he was present and participating in the alleged robbery at the time of the alleged shooting of the postal employee.

see United States v. Gallishaw, supra;  
compare United States v. Alsondo, Rehearing  
on Docket Nos. 73-1297, 73-1466 and 73-1467  
(2nd Cir., Nov. 19, 1973).

*Denied*REQUEST NO. 6

In order to convict defendant Rippy of Count Three as a joint venturer, you must find beyond a reasonable doubt that he was present and participating in the alleged assault at the time of the alleged shooting of the postal employee.

see United States v. Gallishaw, supra;  
compare United States v. Alsondo,  
Rehearing on Docket Nos. 73-1297, 73-1466  
and 73-1467 (2nd Cir., Nov. 19, 1973).



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA,

v.

73 Cr. 606

THOMAS JOSEPH CARROLL, JOHN DOE a/k/a  
"JACK", VINCENT McCLUSKEY, a/k/a "MIKE",  
ROBERT E. RIPPY, a/k/a "RIPP", CHESTER  
CRAWFORD, PAUL CRAWFORD, TERRENCE DEWEY  
MYERS and GEOFFREY MATTHEWS MANN,

Defendants.  
----- X

DEFENDANT VINCENT McCLUSKEY's  
REQUESTS TO CHARGE

JOHN F. MARTIN  
Attorney for Defendant McCLUSKEY  
Office & P. O. Address  
342 Madison Avenue  
New York, New York 10017  
Tel. (212) 279-6995

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA,

v.

73 Cr. 606

THOMAS JOSEPH CARROLL, JOHN DON, a/k/a  
"JACK", VINCENT McCLUSKEY, a/k/a "MIKE";  
ROBERT E. RUPPY, a/k/a "RIPP", CHESTER  
CRAWFORD, PAUL CRAWFORD, TERENCE DEWEY  
MYERS and GEOFFREY MATTHEWS MANN,

Defendants.

----- X  
DEFENDANT VINCENT McCLUSKEY's  
REQUESTS TO CHARGE

Defendant Vincent McCluskey respectfully requests the Court  
to include the following in its charge to the jury:

Request No. 1

Testimony of Informer - Interested Witness

The testimony of an informer who provides evidence against a  
defendant for pay, or for immunity from punishment, or for personal  
advantage or vindication, must be examined and weighed by the jury with  
greater care than the testimony of an ordinary witness. The jury must  
determine whether the informer's testimony has been affected by interest,  
or by prejudice against defendant.

Hoffa v. United States, 385 U.S. 293, 312 n. 14, 87 S.Ct.  
408, 418, 17 L.Ed.2d 374 (1966), reh. den. 386 U.S. 940,  
951, 87 S.Ct. 970, 17 L.Ed.2d 880 (1967); Bush v. United States  
126 U.S.App.D.C. 174, 375 F.2d 602 (1967).

Request No. 2Mere Presence Not Sufficient

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

Pinkney v. United States, 380 F.2d 882 (5th Cir. 1967),  
cert. den. 390 U.S. 908, 88 S.Ct. 831, 19 L.Ed.2d 876;

Nipp v. United States, 422 F.2d 509 (10th Cir. 1970),  
cert. den. 399 U.S. 913, 90 S.Ct. 2213, 26 L.Ed.2d 569,  
cert. den. 397 U.S. 1008, 90 S.Ct. 1235, 25 L.Ed.2d 420.

Request No. 3Impeachment - Inconsistent Statements or Conduct

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

United States v. Kahr, 381 F.2d 824, 835-836 (7th Cir. 1967), cert. den. 389 U.S. 1015, 88 S.Ct. 591, 19 L.Ed.2d 661, reh. den 392 U.S. 948, 88 S.Ct. 2272, 20 L.Ed.2d 1413; United States v. Santos, 372 F.2d 177, 180 (2d Cir. 1967).

See also: The Preliminary Draft of Proposed Rules of Evidence for the United States District Courts and Magistrates, P. 164.



Request No. 4Impeachment - Conviction of Felony

The testimony of a witness may be discredited or impeached by showing that the witness has been convicted of a felony, that is, of a crime punishable by imprisonment for a term of years. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment.

Medina v. United States, 254 F.2d 228 (9th Cir. 1958),  
cert. den. 358 U.S. 846, 79 S.Ct. 72, 3 L.Ed.2d 80 (1958);  
Roberson v. United States, 249 F.2d 737, 72 A.1 2d 434  
(5th Cir. 1957), cert. den. 356 U.S. 919, 78 S.Ct. 704,  
2 L.Ed.2d 715 (1958); United States v. Escobedo, 430 F.2d 14,  
18 (7th Cir. 1970).

Request No. 5No Inference Against Defendant by Reason of his Failure to Testify.

Members of the Jury, I charge you that in every criminal case, without exception, there is a rule which every defendant has the privilege and right to rely on. It is the rule that no defendant under any circumstances is compelled to take the witness stand or offer any testimony whatever. By pleading "not guilty", the defendant has in effect denied the charges on which he is being tried and has put into issue every material accusation against him stated in the indictment. The law has given him the right to say to the prosecution in effect: Prove your case against me beyond a reasonable doubt; it is my judgment that the situation is such that I am not bound to take the witness stand and the law gives me that right, and the law gives me that privilege.

It is the prosecution which must prove the defendant guilty and the defendant cannot be required to testify or to disprove anything.

Any accused person has the right to stand mute. This right has a historical basis of several centuries having been part of the law of England and having become part of the law of this country ever since its inception.

The right to stand mute or to remain silent is a constitutional right granted to every person and the exercise of this constitutional right to remain mute or silent may not be considered by you as any indication of guilt or as an admission of guilt. In fact the defendant Vincent McCluskey's remaining mute may not be considered by you at all

for any purpose. The presumption of innocence and the Government's burden of proving guilt beyond a reasonable doubt will be explained to you further in my charge[ or, has already been explained to you, as the case may be].

Here the defendant Vincent McCluskey did not come forward as a witness or take the witness stand. I charge you that this was his absolute constitutional right. I charge you that you must not allow this fact in any way to prejudice him or to consider it as an indication or admission or inference of guilt.

United States v. Schwartz, 398 F.2d 464 (7th Cir. 1968)  
cert. den. 393 U.S. 10062, 89 S.Ct. 714, 21 L.Ed.2d 705;

Holland v. United States, 348 U.S. 121, 138-139, 75 S.Ct.  
127, 136-137, 99 L.Ed. 150 (1954).

Request No. 6Presumption of Innocence - Burden of Proof - Reasonable Doubt

The law presumes a defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" - with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense - the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden of duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jurors do not feel



convinced to a moral certainty that a defendant is guilty of the charge.

See: Wright, Federal Practice and Procedure:  
Criminal Sec. 500; Crim. Jury Instr. D.C. Nos. 8, 9

Holt v. United States, 218 U.S. 245, 253, 31 S. Ct. 26, 54 L. Ed. 1021 (1910); Agnew v. United States, 165 U.S. 36, 49-50, 52, 17 S. Ct. 235, 240-241, 41 L. Ed. 624 (1897).

Boatright v. United States, 105 F. 2d 737 (8th Cir. 1939);  
United States v. Link, 202 F. 2d 592 (3d Cir. 1953).

Request No. 7Indictment but an Accusation - Direct Evidence -  
Circumstantial Evidence

An indictment (information) is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence - such as the testimony of an eyewitness. The other is circumstantial evidence - the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Indictment not evidence: United States v. Walker,  
313 F.2d 236, 241 (6th Cir. 1963), cert. den.  
374 U.S. 807, 83 S. Ct. 1695, 10 L.Ed.2d 1031;  
Black v. United States, 309 F.2d 331, 343 (8th Cir. 1962),  
cert. den. 372 U.S. 934, 83 S.Ct. 880, 9 L.Ed.2d 765;  
United States v. Senior, 274 F.2d 613, 617 (7th Cir. 1960);  
United States v. Sutton, 312 Fed. Supp. 969, 972 (Dist.Ct.  
Ariz. 1970) Judgmt. aff'd. 446 F.2d 916 (C.A.) cert.den.  
404 U.S. 10025, 92 S.Ct. 699, 30 L.Ed.2d 675.

Request No. 8Number of Witnesses Not Necessarily Controlling

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

Request No. 9Confession - Incriminating Co-defendant

A confession made outside of court by one defendant may not be considered as evidence against another defendant not a party to such confession.

Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620,  
20 L.Ed.2d 476 (1968)



Request No. 10Admission - Incriminating Co-Defendant

An admission or incriminatory statement made or act done by one defendant, outside of court, may not be considered as evidence against another defendant who was not present and so did not see the act done or hear the statement made.

Request No. 11Insanity

The defendant Vincent McCluskey in this case asserts the defense of insanity.

Under the defendant's plea of "not guilty", there is an issue as to his sanity at the time of the alleged offense. The law does not hold a person criminally accountable for his conduct while insane, since an insane person is not capable of forming the intent essential to the commission of a crime.

The sanity of the defendant at the time of the commission of the alleged offense is an element of the crime charged and must be established by the government beyond reasonable doubt, just as it must establish every other element of the offense charged.

A defendant is insane within the meaning of these instructions if, at the time of the alleged criminal conduct, as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

As used in these instructions, the terms 'mental disease' or 'defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

For the purpose of throwing light upon the mental condition of the accused at the time of the alleged offense, the jury may consider

evidence of his mental state both before and after that time. The material issue, however, is whether the defendant was sane or insane at the time of the alleged criminal conduct.

Temporary insanity, as well as insanity of longer duration, is recognized by the law.

If the evidence in the case leaves you with a reasonable doubt as to whether the defendant was sane at the time of the alleged offense, you will find him not guilty, even though it may appear that he was sane at earlier and later times.

In considering the mental state of the accused, the jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The defendant Vincent McCluskey is entitled to have the question of his sanity submitted to you the members of the jury for your determination even though he has offered no expert testimony to support his claim.

Lake v. United States, 407 F.2d 908 (1969);

United States v. Freeman, 357 F.2d 606 (2nd Cir. 1966);

United States v. Green, 468 F.2d 116 (4th Cir. 1972)

Request No. 12Where Insanity Claim Fails - Intent Issue Still Remains

Where a defendant has raised the issue of his insanity, and the jury finds from the evidence in the case beyond a reasonable doubt that the accused was not insane at the time of the alleged offense, it is still the duty of the jury to consider all the evidence in the case which may aid determination of state of mind, including all evidence offered on the issue as to insanity, in order to determine whether the defendant acted or failed to act with specific intent, as charged.

If the evidence in the case leaves the jury with a reasonable doubt whether the mind of the accused was capable of forming, or did form, specific intent to commit the crime charged, the jury should acquit the accused.

As stated before, the law never imposes upon a defendant the burden or duty of calling any witnesses or producing any evidence.



Request No. 13Testimony of an Accomplice(Alternate Charge - 1)

The defendant may not be convicted of any offense upon the testimony of an alleged accomplice unless supported by corroborative evidence tending to connect the defendant with the commission of such offense.

An accomplice means a witness in a criminal action who, according to the evidence adduced in such action may reasonably be considered to have participated in: (a) the offense charged; or (b) an offense based upon the same or some of the same facts or conduct which constitute the offense charged.

A witness who is an alleged accomplice as I have just defined to you, is no less such an accomplice by reason of the fact that a prosecution or conviction of such alleged accomplice is barred or precluded by some defense or exemption such as immunity from prosecution granted to such alleged accomplice, or previous prosecution or other incidental or collateral impediment to the prosecution or conviction of such alleged accomplice which does not affect the conclusion that such witness-accomplice engaged in the conduct constituting the offense involved herein, together with the required mental state demanded by the law.

The corroboration of an alleged accomplice must not come from another alleged accomplice; in simple English, one accomplice may not

corroborate another. The corroboration necessary may not be great or substantial, but it must be some evidence tending to show that the defendant Vincent McCluskey committed all the elements of the crime charged in the indictment.

(Note to the Court: This request to charge is admittedly a request that is not in conformity with the decisions of the Federal Courts of most circuits with regard to the issue of corroboration. This charge is based upon Rule 26 of the Federal Rules of Criminal procedure and Keliher v. United States, 193 F. 8, 15 (1st Cir. 1912); and People of the Territory of Guam v. Camacho, 470 F.2d 919 (9th Cir. 1972); Criminal Procedure Law (New York) Sec. 60.22.)

Members of the Jury, throughout my charge to you on the law regarding accomplice's testimony, I may on some occasions have used the term "accomplice" and on other occasions used the term "alleged accomplice". In all instances you are to treat my comments as meaning an "alleged accomplice". Under no circumstances are you to infer from the use of the term "alleged accomplice" that the defendant Vincent McCluskey is in any way considered to be guilty. To the contrary, the defendant Vincent McCluskey, as indeed all defendants in a criminal case, is absolutely presumed to be innocent until proven guilty, beyond a reasonable doubt. I have already discussed with you the requirements of reasonable doubt in my charge.

Request No. 13Testimony of an Accomplice(Alternate Charge - 2)

An accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged.

The testimony of an alleged accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

The uncorroborated testimony of an alleged accomplice must be corroborated and cannot be the sole basis of a conviction, if you find the testimony of the alleged accomplice to be either "incredible" or "unsubstantial."

Experience has shown that accomplices may be motivated to place the responsibilities on others than themselves. Accordingly, an alleged accomplice's testimony should be closely examined, weighed with care, checked with the facts which you find to exist in this case, and against the evidence which may corroborate them, and then you should give the testimony such weight as you deem proper.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice unless you believe that unsupported

testimony beyond a reasonable doubt.

Adapted in part from the charge in United States v. Projanski, 465 F.2d 123, 139 (2nd Cir. 1972);  
Tillery v. United States, 411 F. 2d 644 (5th Cir. 1969);  
Gulley v. United States, 319 F.2d 77, 80 (6th Cir. 1963),  
 cert. den. 375 U.S. 942, 84 S.Ct. 349, 11 L.Ed.2d 273 (1964);  
Moore v. United States, 356 F.2d 39, 43 (N.2) (5th Cir. 1966);  
Washington v. Texas, 388 U. S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019, on remand 417 S.W.2d 278 (Tex. Crim. App. 1967);  
United States v. Johnson, 343 F.2d 5, 6 (2nd Cir. 1965)

Members of the Jury, throughout my charge to you on the law regarding accomplice's testimony, I may on some occasions have used the term "accomplice" and on other occasions used the term "alleged accomplice". In all instances you are to treat my comments as meaning an "alleged accomplice". Under no circumstances are you to infer from the use of the term "alleged accomplice" that the defendant Vincent McCluskey is in any way considered to be guilty. To the contrary, the defendant Vincent McCluskey, as indeed all defendants in a criminal case, is absolutely presumed to be innocent until proven guilty, beyond a reasonable doubt. I have already discussed with you the requirements of reasonable doubt in my charge.



Request No. 14Not Required to Accept Uncontradicted Testimony

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you that such testimony is not worthy of belief.

Yates v. United States, 407 F.2d 50, (1st Cir. 1969), cert. den. 395 U.S. 925, 89 S.Ct. 1781, 23 L.Ed.2d 242; United States v. Manuszak, 234 F.2d 421, 424 (3rd Cir. 1956).

**Request No. 15****Conspiracy.**

1. You are instructed that a conspiracy cannot be proved merely by proof, beyond a reasonable doubt, that one of the overt acts alleged in fact occurred. A conspiracy is an agreement or design by two or more persons to violate some law of the United States. An overt act is an act done to accomplish that design. Both must be proved beyond a reasonable doubt.

2. The defendants cannot be convicted of the crime of conspiracy unless the prosecution proves that the acts charged were committed by them with knowledge of the conspiracy, and that the things done by them and their alleged co-conspirators were in furtherance of and in execution of a general plan of conspiracy. If the defendants did the things charged in the indictment merely in violation of the law and not in furtherance and in execution of a general plan of conspiracy, they cannot be convicted of the conspiracy charge in the indictment.

3. You are instructed that the presence of a number of circumstances which raise the suspicion in your minds that the defendants committed or aided in the commission of the substantive offenses referred to in the indictment, does not permit a conviction for the crime of conspiracy unless you find that the government has established that those substantive offenses were committed in execution and furtherance of a plan and agreement.

4. The acts and declarations of one alleged to be a conspirator may not be used by you in determining whether any other person, who was not present at the time of such act or declaration, became a member of a conspiracy. In short, the membership of a defendant in the conspiracy alleged, must be established by what he himself said or did.

5. You may not find any person guilty of conspiracy without substantial evidence of his participation in an unlawful plan or agreement with full knowledge of the corrupt and unlawful purposes of the plan and of participating in the carrying out of the plan. The defendant cannot be convicted unless you are satisfied that he made any such plan a venture of his own.

6. If you find that any defendant committed some overt act, but you find that there is no substantial evidence connecting him with the unlawful agreement or plan to violate the law, you must find him not guilty.

7. You are instructed that a conspiracy does not consist both of the conspiracy and the overt acts done to effect the objects thereof, but of the conspiracy alone. The Government is required to prove beyond a reasonable doubt that an actual unlawful agreement did exist. If you find that the Government has proven acts but has failed to prove a prior unlawful agreement or conspiracy beyond a reasonable doubt, it is your duty to return a verdict of not guilty.

8. The acts committed by any person who was a defendant, but who is found not guilty of the conspiracy, are not binding upon any of the other defendants.

9. Admissions made by any of the alleged conspirators are to be regarded only when made during the operation or carrying out of the conspiracy. Once the conspiracy is ended, whether by failure, success or arrest, such admissions made by the other defendants or conspirators are incompetent as against the defendants and you are instructed to disregard and ignore such admissions.

10. You are instructed that you may not consider against any defendant, any act or declaration or statement made by any of his codefendants out of his presence as tending in any manner to establish his guilt, unless you first find that the following situations exist:

- a. that the act, declaration, or statement was made during the existence of the alleged conspiracy;
- b. that the act, statement or declaration was done or made in furtherance of the object of the conspiracy;
- c. and that the defendant is himself shown to have been a member of the conspiracy by his own acts and statements.

If any of the three situations does not exist, then you may not consider acts and declarations of alleged co-conspirators against defendant.

11. You are instructed that you may not convict any defendant under the conspiracy count of the indictment unless you first find beyond a reasonable doubt, that the defendants know that the merchandise in question was a part of an interstate shipment, and that they knew it was stolen while moving in interstate commerce. Even if you find from the evidence and beyond a reasonable doubt that the defendants knew that the shipment was stolen, you must further find from the evidence and beyond a reasonable doubt, that defendants knew that it was stolen while moving in interstate shipment. If the evidence on this score is lacking, or if you are not convinced beyond a reasonable doubt that the defendants had such knowledge of the interstate character of the shipment of the goods, then you are directed to return a verdict of not guilty.

12. Before you can convict the defendant of the crime of conspiracy you must first find that he entered into an agreement with others to violate the law. Mere knowledge by others of his plan to violate the law without their agreeing to join in the plan is not sufficient. Mere knowledge by the other defendants that the law was being violated, without their joining in an agreement to violate the law, is not sufficient to spell out the crime of conspiracy. Mere aid or assistance given by the defendant to others to violate the law is not sufficient to convict him of the crime of conspiracy, unless such aid was given by him for the purpose of carrying out the unlawful design of a conspiracy agreed to by him and the others.

13. The defendant cannot be convicted of conspiracy without proof that he committed the acts charged with knowledge of the conspiracy, and that the things done by his alleged co-conspirators were in furtherance of and in execution of a general plan of conspiracy. If the defendant did the things charged in the indictment merely in violation of the law and not in furtherance and in execution of a general plan of conspiracy, he cannot be convicted of the conspiracy charged in the indictment.

14. The presence of a number of circumstances which would lead to the suspicion that the defendant committed or aided others in the commission of the substantive offenses referred to in the indictment, does not warrant his conviction for the crime of conspiracy, unless you first find that the substantive offenses were committed in execution and furtherance of the plan and agreement charged in the indictment.

15. The proof shows that the defendant met and knew the other persons named in the indictment as co-conspirators. I charge you that a defendant cannot be convicted because of his acquaintance or association with some or all of the conspirators named in the indictment unless it is proven by the Government beyond a reasonable doubt, that he had guilty knowledge of, and with such knowledge, participated in the conspiracy or in furtherance thereof.

16. The mere fact that ten persons are on trial together cannot be considered in any way as indicating that they participated in a common plan, agreement or conspiracy to violate the law. The mere fact that they may be associated in the same union, group or industry cannot be considered by you as proof of their joint participation in a common plan, scheme or conspiracy.

17. You are instructed that there can be no conspiracy without a corrupt agreement or understanding. If you have a reasonable doubt as to the participation of any defendant in the common plan or conspiracy, you must return a verdict of not guilty as to him.



18. The presumption of innocence as to each defendant applies to the conspiracy charge as a whole and to every material element of that charge. You must presume that the defendant had no intent to commit a crime or engage in a conspiracy and that he did nothing corrupt with knowledge of the objects of the conspiracy. It is presumed that the defendant did no corrupt act in furtherance of the conspiracy. The burden to overcome these presumptions rests upon the Government and the failure of any defendant to testify does not create any presumption against him. The defendant is never required to prove his innocence, the Government must prove his guilt and that proof must convince you beyond a reasonable doubt.

19. If you find that two or more of the defendants conspired together to violate the statute, and that they did certain things without knowledge of the other defendants, and not in concert with the others, and not as part of a common plan or agreement

in which all participated, then I charge you that the conspiracy charged in this indictment has not been established and your verdict must be not guilty as to all defendants who did not participate in the scheme or conspiracy as charged in this indictment.

20. I charge you that the mere similarity of conduct by several defendants, even if some of them were associated with each other does not permit you to infer that the conspiracy charged in the indictment has been established. In order to establish the existence of a conspiracy, the Government must prove beyond a reasonable doubt that these defendants knowingly and wilfully associated in the unlawful, common enterprise as charged in the indictment and, in addition, to such mutual agreement that they participated in it wilfully with intent to effect the object thereof.

21. You are instructed that suspicion, however strong, is never proof under our concept of law and you may not substitute suspicion for evidence. Any inference of participation in this conspiracy cannot be made from the mere association and friendship between some alleged co-conspirators or between some defendants.

22. If you find from the evidence that any defendant in this case had no knowledge of the conspiracy charged in the indictment you are instructed that such persons are not conspirators even if their actions appear to have furthered the object of the conspiracy. Thus, if a defendant committed an overt act which appears to be in furtherance of the conspiracy but without knowledge of the existence of any conspiracy, you must find him not guilty.

23. You are instructed that the existence of the conspiracy and each defendant's connection with it must be established by independent proof, based upon the reasonable inferences to be drawn from such defendant's own actions, his own conduct, and his own declarations.

24. In order to find a defendant guilty of conspiracy, you must find beyond a reasonable doubt that he actively participated in the conspiracy. Mere knowledge of an illegal act on the part of an alleged co-conspirator is insufficient proof of guilt.

25. You are instructed that the fact that the defendant may have participated in the offense which was the object of the conspiracy does not necessarily prove him guilty of conspiracy. The evidence must convince you that he did something other than participate in the offense which was the subject of the conspiracy. There must be proof of an unlawful agreement and participation therein with knowledge.

26. I charge you that before you can find either defendant guilty, you must find from the evidence in this case, beyond a reasonable doubt, that each of them was a member of the conspiracy as charged in the indictment. I charge you that before you can convict the defendants, you must find beyond a reasonable doubt from all of the evidence in this case, that they had knowledge of the alleged conspiratorial acts of the other defendants, and with this knowledge wilfully entered into an agreement or combination with such others to carry out the agreement by their active participation, acquiescence and approval of the acts of the others.<sup>10</sup>

27. You are instructed that mere participation in the substantive offense which was the alleged object of the conspiracy does not establish the defendant's guilt of the crime of conspiracy. The evidence must establish that the defendant also knew of the unlawful agreement and participated therein with such knowledge.<sup>11</sup>

10. *United States v Reina* (CA2 NY) 242 F2d 302, cert den 354 US 913, 1 L Ed 2d 1427, 77 S Ct 1294, reh den 355 US 852, 2 L Ed 2d 61, 78 S Ct 9; *United States v Ah Kee Eng* (CA2 NY) 241 F2d 157, 62 ALR2d 159.

11. *Goodman v United States* (CA9 Cal) 128 F2d 854; *Dahly v United States* (CA8 Minn) 50 F2d 37.

**Request No. 16****Intoxication**

1/ It is for you to determine the extent of the defendant's intoxication, and whether it operated to prevent his forming the intent necessary to constitute the crime.

2/ Whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute a particular type or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act. Any intoxication not necessarily total, may be considered on the question of intent.

3/ The term "Intoxication" means a condition resulting from the drinking of alcoholic beverages which impair a person's normal faculties --either of perception or will or judgment -- so that he or she no longer has the capacity to know the nature of the act he is committing or the capacity to form an intent to commit such an act.

People v. Sanchez, 35 Cal 2d 522, 219 P2d 9;  
State v. Schrader, 243 Iowa 978, 55 NW 2d 232;  
Hall v. Commonwealth, 310 Ky 718, 221 SW2d 652;  
McFarland v. State, 212 Miss 802, 55 So 2d 437.

Smith v. People, 120 Colo 39, 206 P2d 826; People v. Savage, 5 Ill 2d 296, 125 NE 2d 449; State v.

Alexander, 251 La 245, 40 So 2d 232; People V. Guillett,  
342 Mich 1, 69 NW 2d 140.

Wheatley v. United States (CA 4 W Va) 159 F2d 599;  
Britts v. State, 158 Fla 839, 30 So 2d 363; People  
v. Schneider, 362 Ill 478, 200 NE321; People v.  
Koerber, 244 NY 147, 155 NE 79.



Request No. 17Knowledge:

I ask Your Honor to charge the jury that where there was more than one defendant and they were charged with conspiracy, in order to convict any defendant of the crime of murder, the jury must be satisfied beyond a reasonable doubt that each defendant knew of the proposed killing in advance, and planned and encouraged it.

The defendants in this case cannot be convicted, in the absence of proof beyond a reasonable doubt, of their knowledge, connivance or consent to the killing of the decedent. A defendant cannot be held criminally responsible for any deed done by other persons if it does not appear beyond a reasonable doubt that the general purpose was contemplated or assented to by him and was done with his knowledge.

In order to convict the defendants the jury must be satisfied beyond a reasonable doubt that the defendants, each of them, knew of the proposed killing in advance and planned and encouraged it.

I instruct you that in order to find the defendants guilty you must find, beyond a reasonable doubt, that they

knew of the alleged falsity of the statements as referred to in the indictment and that they knowingly used the said statements in order to defraud the Government.

Ingram v. United States, 360 US 672, 3 L Ed 2d 1503, 79 S Ct 1314, reh den 361 US 856, 4 L Ed 2d 96, 80 S Ct 42; Linde v. United States (CA 8 SD) 13 F2d 59; West v. State, 25 Ala App 492, 149 So 354; Anello v. State 201 Md 164, 93 A 2d 71; People v. Weiss, 290 NY 160, 48 NE 2d 306; Anderson v. State, 66 Okla Crim 291, 91 P2d 794; Lee v. State, 152 Tex Crim 401, 214 SW 2d 619

Ingram v. United States, 360 US 672, 3 L Ed 2d 1503, 79 S Ct 1314, reh den 361 US 856, 4 L Ed 2d 96, 80, S Ct 42; Linde v. United States (CA 8 SD) 13 F2d 59; West v. State, 25 Ala App 492, 149 So 354; Anello v. State, 201 Md 164, 93 A2d 71; People v. Weiss, 290 NY 160, 48 NE 2d 306; Anderson v. State, 66 Okla Crim 291 91 P2d 794; Lee v State, 152 Tex Crim 401, 214 SW 2d 619.

Request No. 18Motive:

The jury is instructed that in its deliberations upon the question of the defendant's guilt or innocence, it may consider the lack of motive to commit the crime charged.

Hamilton v. State, 169 Ga 613, 151 SE 17; State v. Johnson, 139 La 829, 72 So 370; Felsman V. State, 45 Ohio App 428, 14 Ohio L Abs 202, 187 NE 201; State v Coleman, 20 SC 441; Orange v. Commonwealth, 191 Va 423, 61 SE 2d 267.

Request No. 19

If you do not find beyond a reasonable doubt that the defendant VINCENT McCLOSKEY did unlawfully kill William Hickey and that such killing was done with malice aforethought and that the killing was committed in the perpetration of or an attempt to perpetrate a robbery, then you must find the defendant, Vincent McCloskey, innocent.



**Request No. 20****Accomplices and Co-Conspirators:**

1. The testimony of an accomplice or co-conspirator must be weighed with great care and be scrutinized closely, carefully and cautiously. This testimony, which is subject to great suspicion, must be viewed with distrust and acted on only after due and careful deliberation.<sup>6</sup>
2. The testimony of an accomplice or co-conspirator is testimony from a tainted source.<sup>7</sup>
3. The testimony of accomplices must be scrutinized with great care and caution.<sup>8</sup>
4. While you may convict the defendant upon the uncorroborated testimony of an accomplice,<sup>9</sup> nevertheless, before you should decide to do so, you must review that testimony with caution and decide that it is clear and convincing and that it has been proven to your satisfaction that the defendant is guilty beyond a reasonable doubt.<sup>10</sup>
5. The motives of an accomplice or co-conspirator in testifying, and the circumstances under which his testimony is given, should be considered in determining how much weight and credibility his testimony should be given.<sup>11</sup>
6. In determining the weight and consideration of the testimony of an accomplice or co-conspirator, you must consider whether there has been any promise to him or indication of favorable treatment for him or actual benefit conferred, promised or indicated by the circumstances of the case.<sup>12</sup>
7. You will recall that testimony of acts and statements made by alleged co-conspirators in the absence of a defendant was received on a tentative basis in evidence. This testimony was received subject to independent proof of the existence of the conspiracy and the absent defendant's knowing participation in the conspiracy. If you do not find, on independent proof, that a conspiracy existed and that the absent defendant knowingly participated in the conspiracy, that tentative basis is destroyed and all such testimony must be ignored as to such absent defendant.
8. You are instructed that an accomplice is a person tainted with confessed criminality. He may have been influenced in his testimony by the strong hope of favor or pardon.
9. In determining the interest which an accomplice has in the case you are free to weigh and consider the fact that he has been indicated for the offenses which he admittedly has committed and that if he testifies fully and freely he is entitled to some consideration from the Government. You have a right to consider all of this in determining the weight which you will give his testimony.

10. X is named in the indictment as a co-conspirator. He is not charged as defendant, nevertheless, by his testimony he is self-confessed accomplice. An accomplice, when he gives evidence against other persons may be impelled to do so by motives which

may preclude his telling the truth. In other words he may have a reason to lie as to material facts, and it is your duty to give careful consideration to that fact. An accomplice, tainted as he is with a past criminality, is often influenced in his testimony by motives of favor or pardon. Therefore, you must look carefully into any secret motives which might actuate bad minds and victimize the innocent. You are cautioned to scrutinize his testimony with great care and caution."

11. You are instructed that the testimony of one accomplice witness cannot corroborate the testimony of another accomplice witness. I further instruct you that the witness X is an accomplice, that is to say, he has testified that he committed the offenses alleged in the indictment. Furthermore, the witness Y is likewise an accomplice for the same reason.

I charge you that the testimony of the witness X may not be considered as corroborating or lending credence to the testimony of the witness Y, nor may the testimony of the witness Y be regarded as corroborating or lending credence to the testimony of the witness X. Such testimony must be regarded by you as arising from the same tainted source.

**- Request No. 21**

**Miscellaneous**

1. No individual point, instruction, sentence or phrase is to be considered any more important than the remaining portions of the instructions or charge. No emphasis is intended by the Court and none is to be inferred. The jury is to consider all the instructions as a whole and regard each in the light of all the others.<sup>17</sup>

2. The charges to the jury on questions of law, at the request of the defendant or his counsel, should receive as much consideration as any other part of the Court's charge.<sup>18</sup>

3. "The charges on questions of law, which I have given you (the jury) at the request of counsel for the defendant, are the law of the State of New York, and it is your duty to follow those instructions."

4. The rights of each of the defendants are separate and distinct and an independent verdict must be brought in as to each of them.<sup>19</sup>

5. The various crimes charged in this indictment are separate, distinct and independent crimes which must be considered by the jury separately as such.<sup>20</sup>

6. The jury must consider each and every count as if it were a separate offense, charged in a separate indictment. Before they can convict the defendant of any single count in the indictment, they must find beyond a reasonable doubt that the defendant(s) committed or aided, abetted, procured, counseled or advised in the committing of that specific offense.

7. Before the jury may convict the defendant of any of the counts in this indictment, they must find the offense charged therein is proven beyond a reasonable doubt by evidence which is corroborated in every material respect.<sup>1</sup>

8. Each defendant is charged in a separate indictment. The jury must consider the charges contained, therein, independently. They must, in addition, consider each count of each indictment separately as to the charges made against the respective defendants.<sup>2</sup> Before the jury can convict a defendant on any count of the indictment, the prosecution must prove beyond a reasonable doubt

**each and every aspect of the elements of the offense charged as to each defendant.<sup>3</sup>**

9. The jury may find the defendant not guilty of the crime charged in the indictment, but guilty of some degree inferior thereto, or an attempt to commit the crime. If there is reasonable ground of doubt in their minds only as to the degree, the defendant can only be convicted of the lowest of those degrees.<sup>4</sup>

10. When it appears that a defendant has committed a crime and there is reasonable ground for doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only; but never of even the lowest degree unless every element of said degree has been proven beyond a reasonable doubt.<sup>5</sup>

11. The jury is at liberty to find one or more of the defendants guilty and the others not guilty.<sup>6</sup>

12. If the jury cannot agree upon a verdict as to all of the defendants, they may enter a verdict as to those in regard to whom they do agree.<sup>7</sup>

13. If, after the jury has retired, there arises among them a disagreement as to any part of the testimony, or if they desire to be informed of a point of law arising in the case, they must ask to be brought back into the court where the information will then be given them.<sup>8</sup>

14. While it is your duty to confer with your fellow jurors and discuss the evidence with them, the verdict which you render must represent the real judgment and honest conclusion of each of you, and I charge you, upon your oaths, and as a matter of law, that each of you has the duty to arrive at your conclusion separately, and

**that no one of you may surrender his earnest belief concerning the guilt or innocence of the defendants for the purpose of preventing a disagreement or arriving at a compromise.**

15. It is the duty of each juror, while you are deliberating, to give careful attention and consideration to the views of his fellow jurors, and to discuss the facts with them. Each juror acts for himself and must reach his own judgment after discussion of the facts with the other jurors. If, after such discussion and deliberation, a juror entertains a reasonable doubt of the guilt of a defendant he should find him not guilty.

16. It is your duty to confer with your fellow jurors and discuss the evidence with them. The verdict you render must represent the real and honest conclusion of each of you, and no one of you may surrender his or her earnest belief concerning the guilt or innocence of any defendant for the purpose of preventing a disagreement, or for the purpose of arriving at a compromise, notwithstanding the length and duration of this trial.

17. While it is the duty of the jurors to confer and deliberate with one another, before arriving at a verdict, nevertheless, if any juror after such deliberation conscientiously reaches a decision on the facts, he has no right to surrender his decision to the decision of the majority, if he believes that his decision is correct.



18. The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your own individual judgment. Each of you must decide the case for yourself. You should not surrender your honest conviction as to the weight and effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are the judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

Respectfully submitted

JOHN F. MARTIN  
Attorney for Defendant  
VINCENT McCLOSKEY  
342 Madison Avenue  
New York, New York 10017  
212 - 279- 6995

JJK:lq  
73-1864  
n-322

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

237a

-----X

UNITED STATES OF AMERICA, :

- v - :

73 Cr. 855

73 Cr. 972

THOMAS JOSEPH CARROLL, et al., :

Defendants. :

-----X

GOVERNMENT'S SUPPLEMENTAL  
REQUESTS TO CHARGE

The Government respectfully requests that  
the Court include the following in its charge to the  
Jury:

JJK:lq  
73-1865  
n-332

*Deid* *Verdict*  
SUPPLEMENTAL REQUEST NO. 28A

238a

In this connection (see Request 28, Pinkerton Charge), I instruct you, in order to convict any defendant on the first count in the indictment, the conspiracy count, you must be convinced beyond a reasonable doubt that that person knew before April 5, 1973 the subject of the planned robbery was a United States Mail Truck. If you find that a defendant did not have this knowledge, then you must acquit that defendant on the conspiracy count. If, however, you find that defendant, although not knowing that the subject of the robbery was a mail truck was a member of a joint criminal venture and that robbery was within the scope of that venture as that defendant understood it, then you must consider his guilt or innocence on the two substantive counts in the indictment, the murder of Hickey and the assault on Lawrence. If you find that either of these acts were committed during the course of a crime which was within the scope of the criminal venture as the defendant understood it and in furtherance of that venture, then you may find that defendant guilty of these two substantive crimes, counts two and three in the indictment.

United States v. Alsondo, Dkt. Nos.  
73-1297, 73-1466, 73-1467,  
F.2d (2d Cir. July 13, 1973),  
United States v. Alsondo, F.2d  
, Dkt. Nos. 73-1297, 73-1466,  
73-1467 (2d Cir. November 19, 1973).

JJK:lq  
73-1865  
n-332

SUPPLEMENTAL REQUEST NO 29 (6A)

*Deed*  
239a

You will recall that I instructed you before you were sworn in as jurors that the death penalty, or capital punishment as it is sometimes known, plays no part in this case. I remind you now that a death sentence cannot be imposed upon any defendant who is convicted here and it is to play no part in your deliberations.

Section 1111, Title 18, United States Code;  
See, Furman v. Georgia, 408 U.S. 238 (1972).



JJK:lq  
73-1865  
n-322

240a

Respectfully submitted,

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

JOHN J. KENNEY  
MICHAEL Q. CAREY  
Assistant United States Attorneys

- Of Counsel -

JJK:sr  
73-1865

241a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

THOMAS JOSEPH CARROLL, et al.,

Defendant.

:

: 73 Cr. 855  
: 73 Cr. 972  
: (CMM)

x

STATE OF NEW YORK )  
COUNTY OF NEW YORK )  
SOUTHERN DISTRICT OF NEW YORK )

ss.:



JOHN J. KENNEY, being duly sworn, deposes  
and says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney  
for the Southern District of New York, and as such I am  
assigned to and am familiar with the facts and prior pro-  
ceedings in the above captioned matter.

2. This affidavit is submitted in opposition  
to the omnibus motion by the defendant Vincent "Mike"  
McCloskey seeking (a) adjournment of the trial, (b)  
a severance, (c) inspection of the grand jury minutes and  
additional time in which to move to dismiss the indictment  
(d) dismissal of the indictment (e) suppression of all  
statements made by McCloskey to a federal agent during  
November 1973 (f) copies of government investigative  
reports concerning this case (g) copies of news releases,  
transcripts of press conferences and press statements about  
the present case (h) copies of any agreement between the  
government and a defendant herein inducing a guilty plea  
and (i) a hearing on these motions.

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STATEMENTS BY McCLOSKEY  
TO GOVERNMENT AGENTS  
DURING NOVEMBER, 1973

3. On November 21st, 1973 the defendant Vincent McCloskey and his then attorney, Jay Goldberg, Esq. came to the office of affiant at Mr. Goldberg's request to discuss the possibility of a plea by Vincent McCloskey in the present case. They were told at that time that the government would consent to a plea to second degree murder in satisfaction of the indictment in the present case only on the following grounds:

(a) Vincent McCloskey, through his attorney, would make a full statement of cases in which he could either give information or testify to events himself.

(b) If at this point the government was satisfied his cooperation was full and complete, he would then be placed before the grand jury and questioned as to these crimes.; after which the government would consent to the agreed guilty plea. If, on the other hand, the government was not satisfied with the truthfulness and frankness of this representation, it would simply reject McCloskey's offer.

(c) If McCloskey's offer was accepted he would not be prosecuted for crimes he gave information about, except the present offense. If however the offer was rejected, what he said could be used against him.

(d) If McCloskey's offer was accepted, the

government would undertake to represent to the Court at the time of sentence in the present case the extent of the co-operation and the results.

4. Both McCloskey and his attorney agreed to these conditions with the exception that Goldberg would not submit a list of crimes about which McCloskey could testify or give information but rather McCloskey would be interviewed by affiant in his attorney's absence. Goldberg asked McCloskey if this was satisfactory with him in your affiant's presence and McCloskey said that it was.

5. At this point, a discussion followed during which McCloskey, in the presence of his attorney, asked questions about the details of the present crime.

6. On November 23rd, 1973, McCloskey was questioned concerning the disposal of the items to be stolen from the mail truck in the present case. This questioning was in the absence of his attorney pursuant to the above agreement. It was in the presence of Kenneth Kivit, and Lea Shatzel, United States Postal Inspectors, and your affiant. McCloskey refused to answer questions on this occasion which were unrelated to the United States mails. He stated he wanted William Kelly, Special Agent of the Federal Bureau of Investigation present when other offenses, relating to various hijackings were discussed but did not want the Postal Inspectors present.

7. At approximately 12:30 P.M. on the same day, McCloskey was visited in the "lock up" in the office of the United States Marshal for this District by your



affiant and Arthur J. Viviani, Assistant United States Attorney. He was asked what his understanding of his agreement with the government at that time was.

McCloskey answered, in return for his full co-operation he would receive a second degree murder plea. McCloskey stated that he had no information about murders or assaultive crimes (other than the present offense). Affiant again explained to McCloskey that he was preparing a list of crimes about which he would either give information or testify and the government consent to any such plea depended on the completeness and fullness of his co-operation. McCloskey answered that he understood and would tell the government everything.

8. On the same day, affiant prepared a written statement of this understanding or agreement and read it to Jay Goldberg over the telephone. Mr. Goldberg said it stated in substance his understanding of the agreement between McCloskey and the government and that he did not feel it was necessary for him to be present when it was read and signed by his client. That agreement is attached hereto and marked "exhibit A".

9. On Monday, November 26th, 1973, the same agreement was given to McCloskey in the absence of his attorney. McCloskey read it, said that he understood it and signed it. He was then interviewed by your affiant and William Kelly (mentioned above) on matters unrelated to the present indictment.

10. Subsequently, the government determined

JJK:sr  
73-1865

on the basis of independent information, that McCloskey was not giving full and complete co-operation in any sense and, therefore, rejected his offer of co-operation and refused to consent to the proffered plea.

MOTION FOR ADJOURNMENT  
OF THE TRIAL

11. The record before this Court makes clear that present counsel for Vincent McCloskey was substituted for Edward Panzer, Esq. on the understanding that he would be prepared for trial on December 10th, 1973. The government opposes any adjournment of this date.

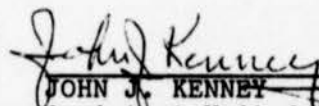
AGREEMENTS BETWEEN THE  
GOVERNMENT AND DEFENDANTS

12. The government will make known any agreement between itself and a defendant in the present case, but only if it plans to call that defendant as a government witness at trial.

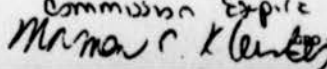
OTHER MOTIONS

13. The Government opposes other motions made by the defendants because they are repetitive, having been denied by this Court on August 6th, 1973 and insufficient grounds have been set forth for these claims in any event

WHEREFORE, the government respectfully requests that the motions of Vincent McCloskey be denied.

  
JOHN J. KENNEY  
Assistant United States Attorney

Sworn to before me this  
8 day of December, 1973

Norman C. Kleinberg  
Notary Public - State of New York  
No. 9822989  
Qualified in New York County  
Commission Expires 3/30/74  
  
1973 O-476-479

JJK:ais

November 26th, 1973

## STATEMENT:

United States v. Carroll et al.  
73 Cr. 855

I, Vincent "Mike" Mc Closkey, fully understand that the government is now preparing a list of the cases in which I can either give information or testify. This list is being prepared from statements which I am giving to the Government at this time. These statements are given in the absence of my attorney but with his knowledge and my full consent.

I further understand that when this list is completed, it will be checked and verified with Government records and agents for accuracy and completeness. If the Government finds my cooperation to be full, truthful and complete, I will be permitted to plead guilty to second degree murder, a crime punishable by life imprisonment, in full satisfaction of the indictment. If, however, the Government should find that my cooperation has been less than full or truthful or complete, the Government will not consent to the above plea and I will be required to stand trial or plead to the entire indictment. If I am permitted to plead guilty to second degree murder, I will not be prosecuted by the United States Government for any of the crimes about which I have given information. However, if the Government does not consent to my plea of second degree murder, I may be prosecuted for any of these crimes and anything I have said to a Government agent may be used against me.

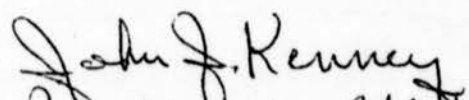
*VM*

JJK:ais

I have read this one page statement and it is  
my understanding of the basis upon which I am making  
statements to the Government and its agents at this time.

  
VINCENT "MIKE" MC CLOSKEY

Witnessed:

  
John F. Kenney  
Asst. U. S. Atty. Gen.



*John F. Martin*  
*Counselor at Law*

*342 Madison Avenue, New York, N.Y. 10017*

*Suite 912*

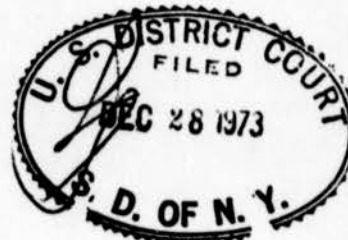
212 - 279-8888

December 7, 1973

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12/7/73  
K

Hon. Charles M. Metzner  
Judge of the United States District Court  
United States District Court  
Southern District of New York  
Foley Square  
New York, New York



Re: United States of America  
vs. Vincent McCloskey  
Indictment No. 73 CR 855 (CMM)

Dear Judge Metzner:

On December 4, 1973, I was substituted as attorney for the defendant, VINCENT McCLOSKEY, before your Honor and was instructed by the Court to prepare and have before your Honor by Friday, December 7, 1973 proposed charges and a Memorandum of Law.

Since December 4, 1973, I have been working around the clock in an attempt to prepare the case and to prepare Motions.

I was finally able to obtain the file from Mr. Goldberg's office on December 5, 1973 and I am still negotiating with the U.S. Attorneys' office in an effort to obtain additional documents and papers filed in the action. I have consulted with the defendant on two occasions, one for several hours on December 5, 1973 and intend to consult with him again before December 10, 1973.

I have been in the process of accumulating as many of the legal papers, miscellaneous documents and information as are available preparatory to reading, digesting, abstracting and understanding the information contained in them. I am also attempting to read up on the law, conduct investigations, interview potential witnesses, analyze the facts, review the physical area, prepare for trial and to do a thousand and one multitudinous tasks within a severely limited period of time.

I have been unable to physically compile, decide and evaluate the legal points which should be contained in the requests to charge and the Memorandum of Law which I hope to submit to the Court.

continued.....

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HON. CHARLES M. METZNER

-2-

December 7, 1973

I respectfully ask the Court to excuse my inability to provide it with the Memorandum of Law and proposed charges by Friday, December 7, 1973 and I will attempt to deliver the same into the hands of the Court as soon as it is humanly possible to do so under rather trying circumstances.

Respectfully submitted

  
JOHN F. MARTIN

JFM/McG

cc: John J. Kenny  
U. S. Attorney  
U.S. Attorney's Office  
Foley Square  
New York, New York

December 7, 1973

United States Attorney  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007

Att: John J. Kenney  
Assistant United States Attorney

Re: United States of America  
vs. Vincent McCloskey  
Indictment No. 73 CR 855 (CMM)

Dear Mr. Kenney:

In accordance with your cooperative order to serve subpoenas for use of the defendant, Vincent McCloskey, on trial because of the short time involved in preparation for trial, I submit to you the following list of names and I request that you subpoena such witnesses on behalf of the defendant, Vincent McCloskey:

- 1/ Patrolman Thomas Richmond, New York City Police Department, 1st Precinct, Beach and Varick Streets, New York
  - 2/ Police Commissioner of the City of New York together with any and all reports and forms of the New York City Police Department relating to the death of William Hickey on April 5, 1973 at Beekman & Williams Streets, New York; Forms UP 61, DD-19, UP 6, 911 Tape, arrest disposition forms and all other papers concerning the investigation and arrest of the defendants.
  - 3/ Larry Dalia, 1105 West George St. Linden, New Jersey
  - 4/ John Turner, 87 West 6th Street, Bayonne, New Jersey
  - 5/ Stanley L. Portnow, M.D., 823 Park Avenue, New York, New York
  - 6/ Jack Zardley, M.D., Springfield Missouri Medical Center for Federal Prisoners together with all records concerning the defendant, Vincent McCloskey, during his stay in the Medical Center at Springfield, Missouri.
- 855 / ✓ 12



United States Attorneys Office

-2-

December 7, 1973

including medical, physical, psychological histories and reports and any and all other records made regarding the defendant, Vincent McCloskey in conjunction with his stay in said institution.

- 7/ David Abrahamsen, M.D., 1035 Fifth Avenue, New York, New York.
- 8/ Garrett B. Trapnell, 427 West Street, New York, New York
- 9/ Kenneth J. Kievit, Postal Inspector, United States Post Office Department
- 10/ C. J. Brophy, Postal Inspector, United States Post Office Department.

Will you kindly arrange for me to inspect any items taken from the possession of the defendant at the time of his arrest sometime between now and December 9, 1973.

Will you also furnish me with the record of prior convictions of each of the defendants and of any witnesses who will testify on behalf of the government as well as any pending criminal charges against each of its witnesses.

Will you kindly advise whether or not there is any statement signed by the defendant, Vincent McCloskey other than one dated November 25, 1973 and if so, furnish copies.

Thank you for your attention and cooperation.

Very truly yours

John F. Martin

JFM/MCG

cc: Hon. Charles M. Metzner  
United States District Court



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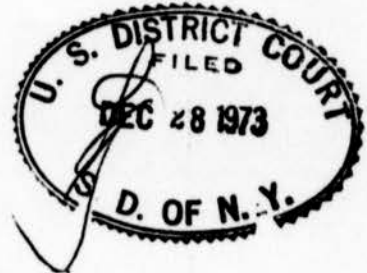
*John F. Martin*  
Counselor at Law

*342 Madison Avenue, New York, N.Y. 10017*  
*Suite 912*

212 - 279-6995

December 6, 1973

Hon. Charles M. Metzner  
Judge of the United States District Court  
United States District Court  
Southern District of New York  
Foley Square  
New York, New York 10007



Re: United States of America  
vs. Vincent McCloskey  
Indictment No. 73 CR 855 (CMM)

Dear Judge Metzner:

This evening, at 10:30 P.M., I interviewed witnesses who were present in the Courtroom on September 17, 1973 when this case was called before the Court.

From their recollections, they informed me that pleas were taken to an Indictment and that some of the defendants pleaded guilty to certain charges and some of the defendants pleaded innocent to the Indictment and that no plea was taken for the defendant, Vincent McCloskey because of his obviously debilitated condition. There was some question as to whether or not the defendant, Vincent McCloskey's then lawyer, pleaded guilty on behalf of Vincent McCloskey.

My search of the files in the record room fail to disclose a copy of this Indictment and fail to disclose any records of any plea by Vincent McCloskey. I asked several of the attorneys if they obtained the Minutes of this hearing and cannot find a copy of such Minutes. I requested the Minutes of this Hearing from the U.S. Attorney's Office. He advised that he had ordered the same but had not obtained them as of the date I spoke to him, that is December 4, 1973.

It is imperative and of the utmost importance that I obtain the Minutes so that trial preparation can be had and motions made in accordance with the contents of such Minutes.

continued.....

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HON. CHARLES M. METZNER

-2-

December 6, 1973

If the defendant, Vincent McCloskey, pleaded guilty, then obviously there is no necessity for preparing for trial. If no plea was made to the Indictment, then it would appear that the case is not ready for trial and a plea of "Not Guilty" should be entered and rights given to the defendant to make motions with respect to the Indictment.

I respectfully ask the Court to order the court stenographer on September 17, 1973 to immediately furnish a copy of these Minutes to the undersigned who will pay for the same as soon as they are ready. I also request that any other court stenographers on any other Hearings in conjunction with this or previous Indictments in which the defendant Vincent McCloskey was involved, be supplied to the undersigned as quickly as possible in order that adequate preparation can be had for trial.

A search of the criminal docket indicates that the present Indictment was filed on September 11, 1973 and that on September 17, 1973 the defendant, Vincent McCloskey, was committed by Order of the Court to Springfield, Missouri. The docket does not indicate that the defendant, Vincent McCloskey, made any plea to the Indictment.

Respectfully submitted

  
John F. Martin

JFM/McG

cc: John J. Kenny  
Assistant United States Attorney  
United States Attorneys Office  
Foley Square  
New York, New York



December 7, 1973

United States Attorney  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10007

Attn: John J. Kenny  
Assistant United States Attorney

Re: United States of America  
vs. Vincent McCloskey  
Indictment No. 73 CR 855 (CMM)

Dear Mr. Kenny:

Having entered the case at the eleventh hour and being unfamiliar with the file and previous proceedings, I had requested your office to furnish me with copies of all of the pleadings, prior motions and other documents which you felt could be relevant to me under the existing Rules of the Court.

I made this request to expedite my preparation and understanding of the case and to generally save time in the preparation for trial.

A search of the Court files showed that there were many missing documents and the files obtained from Mr. Goldberg also appear to contain many lapses in documents and information. I presume that your files might contain more documents and so make the task speedier and more expeditious.

Your advice to my associate, Mr. Carey, to the effect that you would furnish to us any documents pertaining to the defendant, VINCENT McCLOSKEY, only, which we would specifically request and at a cost for duplication, while helpful, does not resolve our dilemma and does not help us with the prime objective of saving in preparing for trial.

In view of the fact that I must request specific documents it seems that seeking help from your office will be in vain.

Continued.....



JOHN J. KERRY, ASSISTANT UNITED STATES ATTORNEYDecember 7, 1973

Should you relent, however, and feel that there are papers in your file involved in the case which might save me time in preparing for trial, I would appreciate your having them photostated and forwarded to me or otherwise make them available to my office. We stand ready to pay such charges as are incurred in the duplication process and will also furnish a messenger.

Thank you for your kind attention and consideration.

Very truly yours

John F. Martin

JFM/McG

cc: Hon. Charles M. Metzner  
United States District Court

United States District Court  
Southern District of N.Y.

257a

United States of America

INDICTMENT  
73 CR 855

V

Thomas Joseph Carol

Upon the following citations and cases the undersigned moves for a mistrial, or in the alternative for a reversal of the Defendant Vincent McCloskey in the event that any written or oral admission of the Defendant Robert E. Riffy or any other defendant are admitted into evidence.

- a. U. S. C. A. CONST AMEND 6
- b. BRUTON V UNITED STATES 391 US 123
- c. CHARLES V. MISSISSIPPI 410 US 284  
(decided Feb. 21, 1973)
- d. U. S. V. MORALES 477 F 2d 1309  
(decided April 18, 1973)
- e. CLARK V STATE 509 P 2d 1398 (Page 1401)

A copy of U. S. Morales is attached. Sorry for its condition but the copy machine was failing.

John F. Martin  
Atty for Defendant  
Vincent McCloskey

342 Madison Ave.  
N.Y.C.

Deemer

**United States District Court**  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

JOHN TURNER

No. 73 CR. 855

S. D. OF N. Y.

On this 8th day of January, 1974, came the attorney for the government and the defendant appeared in person and Jack Caplan, Esq.

IT IS ADJUDGED that the defendant upon his plea of guilty to a lesser included offense of assault and the Court being satisfied thereis a factual basis for the plea

has been convicted of the offense of unlawfully, wilfully and knowingly, did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter and of property of the United States, with intent to rob, steal and purloin such mail matter and property of the United States. (Title 18, United States Code, Sections 2114 and 2.)

And a conspiracy so to do. (Title 18, United States Code, Section 371)

as charged<sup>2</sup> on Counts (1) and (3) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIVE (5) YEARS ON COUNT (1) and TEN (10) YEARS ON COUNT (3)

COUNT (1) is to run concurrently with the sentence imposed in COUNT (3).

COUNT (2) is dismissed on motion of the defendant's counsel with the consent of the government.

~~IT IS ORDERED that~~

RECEIVED  
JAN 11 1974

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

*Charles W. Metzner*  
United States District Judge.  
*Raymond J. Bradford*  
Clerk.

Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. Insert (1) "guilty and the court being satisfied there is a factual basis for the plea." (2) "not guilty, and a verdict of guilty." (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. Insert "in count(s) number" if required. Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. Enter any order with respect to suspension and probation. For use of Court to recommend a particular institution.

**United States District Court**  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No.

Paul Crawford

73 cr. 855

On this 8th day of January, 1974, came the attorney for the government and the defendant appeared in person and by Joseph Klempner Esq.

IT IS ADJUDGED that the defendant upon his plea of guilty and the Court being satisfied there is a factual basis for the plea

has been convicted of the offense of unlawfully, wilfully and knowingly combined, conspired, confederated and agreed with others to violate Sections 1708 and 2114, of Title 18, U.S.C., it was part of said conspiracy that the defendant would steal mail bags from a mail route and other authorized depository for mail matter to wit, a United States Mail Truck in violation of Section 1708, Title 18, U.S.C., it was further a part of said conspiracy that the defendant in attempting to effect a robbery would and did put in jeopardy the lives of said persons by the use of dangerous weapons.  
(Title 18, United States Code, Section 371.)

as charged in count ONE(1).

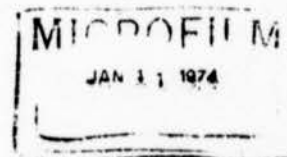
and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO AND A HALF (2½) YEARS on count ONE(1).

Counts (2) and (3) are dismissed on motion of defendant's counsel with the consent of the Government.

~~XXXXXXXXXXXXXXXXXXXX~~



IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to  
a Federal Prison nearest Washington, D.C.

*Charles W. Tzner*  
United States District Judge.  
*Raymond J. Burghardt*  
Clerk.

<sup>1</sup>Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. <sup>2</sup>Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to suspension and probation. <sup>6</sup>For use of Court to recommend a particular institution.



# United States District Court

FOR THE  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No.

Terrence Dewey Myers

73 cr. 855

On this 8th day of January, 1974, came the attorney for the government and the defendant appeared in person and by Murray Mogel Esq.

IT IS ADJUDGED that the defendant upon his plea of guilty to a lesser included offense of Murder in the Second Degree and the Court being satisfied there is a factual basis ~~has been convicted of the offense of~~ for the plea

has been convicted of the offense of unlawfully, wilfully and knowingly in the perpetration and attempted perpetration of a robbery in violation of Title 18, U.S.C., Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, the guarding of said United States Mail Truck.

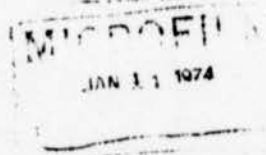
as charged<sup>3</sup> in count TWO(2) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **TWENTY FIVE(25) YEARS** on count (2).

Counts (1) and (3) are dismissed on motion of defendant's counsel with the consent of the Government.

~~XXXXXXXXXXXXXXXXXXXX~~



IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to<sup>6</sup>  
a Federal Prison nearest Washington, D.C.

*Charles J. Metzner*  
United States District Judge.  
*Raymond J. Burghardt*  
Clerk.

<sup>1</sup>Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. <sup>2</sup>Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to suspension and probation. <sup>6</sup>For use of Court to recommend a particular institution.

**United States District Court**  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No.

Geoffrey Matthews Mann

73 cr. 855

On this 8th day of January, 1974, came the attorney for the government and the defendant appeared in person and by Robert Mitchell Esq.

IT IS ADJUDGED that the defendant upon his plea of<sup>2</sup> guilty to a lesser included offense of Murder in the Second Degree and the Court being satisfied there is a factual basis for ~~the plea~~ the plea

has been convicted of the offense of unlawfully, wilfully and knowingly in the perpetration and attempted perpetration of a robbery in violation of Title 18, U.S.C., Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, the guarding of said United States Mail truck.  
(Title 18, U.S.C., Sections 1111, 1114 and 2.)

as charged<sup>3</sup> in count TWO(2) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY FIVE(25) YEARS on count TWO(2).

Counts (1) and (3) are dismissed on motion of defendant's counsel with the consent of the Government

~~XXXXXXXXXXXXXXXXXXXX~~

RECORDED  
JAN 11 1974

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to  
a Federal Prison nearest Washington, D.C.

*Charles W. Mitchell*  
United States District Judge.  
*Raymond J. Bugher*  
Clerk.

<sup>1</sup>Insert "by [name of counsel, counsel]" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. <sup>2</sup>Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to suspension and probation. <sup>6</sup>For use of Court to recommend a particular institution.

USA-33a-106 - WRIT OF H/C AD PROSEQUENDUM  
Ed. 8/23/57

262a

1973 NOV 30 AM 10:

JJK:er  
73-1865

THE PRESIDENT OF THE UNITED STATES OF AMERICA

SDNY

TO: WARDEN, LORTON CORRECTIONAL INSTITUTION AND REFORMATORY  
LORTON, VIRGINIA, United States Marshal for the  
District of Columbia

and United States Marshal  
Southern District of New York,



GREETING:

YOU ARE HEREBY COMMANDED to have the body of ROBERT  
E. RIPPY a/k/a RIPP #132615 now detained in the  
LORTON CORRECTIONAL INSTITUTION AND REFORMATORY  
under your custody as it is said, under safe and secure  
conduct before the Judges of our District Court within  
and for the Southern District of New York, at the United  
States Court House, Foley Square, New York, New York, on  
December 4th, 1973 at 10:30 o'clock in the fore-  
noon, there to appear and stand trial

and immediately after the said ROBERT E. RIPPY  
shall have been discharged or convicted and sentenced on  
said indictment, that you return him to the said  
LORTON CORRECTIONAL INSTITUTION & REFORMATORY  
under safe and secure conduct, and have you then and  
there this writ.

WITNESS the Honorable DAVID N. EDELSTEIN, Chief  
Judge of the United States District Court for the Southern  
District of New York, at the United States Court House,  
Foley Square, New York, N.Y., this            day of

Clerk, United States District Court  
Southern District of New York

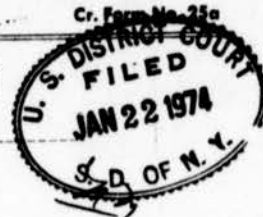
The within writ is hereby allowed.

*B. W. [illegible]*

## United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

No.

Geoffrey Matthews Mann

73 cr. 855

On this 8th day of January, 1974, came the attorney for the government and the defendant appeared in person and by Robert Mitchell Esq.

IT IS ADJUDGED that the defendant upon his plea of guilty to a lesser included offense of Murder in the Second Degree and the Court being satisfied there is a factual basis for ~~the plea~~ the plea

has been convicted of the offense of unlawfully, wilfully and knowingly in the perpetration and attempted perpetration of a robbery in violation of Title 18, U.S.C., Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, the guarding of said United States Mail truck.  
(Title 18, U.S.C., Sections 1111, 1114 and 2.)

as charged in count TWO(2) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY FIVE (25) YEARS on count TWO(2).

Counts (1) and (3) are dismissed on motion of defendant's counsel with the consent of the Government

~~IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.~~

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

CHARLES M. METZNER

United States District Judge.

RAYMOND F. BURGHARDT

Clerk.

The Court recommends commitment to a Federal Prison nearest Washington, D.C.

A True Copy. Certified this 8th day of January, 1974

(Signed) Raymond F. Burghardt Clerk.

(By)

Deputy Clerk.

80-8-74



U.S. DISTRICT COURT  
S. FILED  
JAN 22 1974  
S. D. OF N. Y.

**v.**

No.

73 or. 855

FD-302 (Rev. 5-22-64)

United States District Court  
FOR THE

SOUTHERN DISTRICT OF NEW YORK

United States of America

v.

No.

Paul Crawford

73 cr. 855



On this 8th day of January, 1974, came the attorney for the government and the defendant appeared in person and by Joseph Klumpner Esq.

IT IS ADJUDGED that the defendant upon his plea of guilty and the Court being satisfied there is a factual basis for the plea

has been convicted of the offense of unlawfully, wilfully and knowingly combined, conspired, confederated and agreed with others to violate Sections 1708 and 2114, of Title 18, U.S.C., it was part of said conspiracy that the defendant would steal mail bags from a mail route and other authorized depository for mail matter to wit, a United States Mail Truck in violation of Section 1708, Title 18, U.S.C., it was further a part of said conspiracy that the defendant in attempting to effect a robbery would and did put in jeopardy the lives of said persons by the use of a dangerous weapons.  
(Title 18, United States Code, Section 371.)

as charged in count ONE(1).

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO AND A HALF (2½) YEARS on count ONE(1).

Counts (2) and (3) are dismissed on motion of defendant's counsel with the consent of the Government.

\*\*\*\*\*

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

CHARLES M. METZGER

United States District Judge.

The Court recommends commitment to  
a Federal Prison nearest Washington, D.C.

RAYMOND F. BURGHARDT

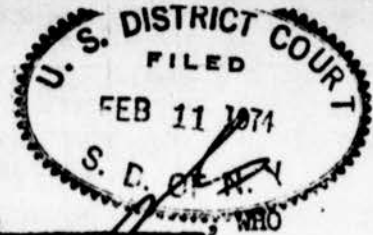
Clerk.

A True Copy. Certified this 8th day of January, 1974

(Signed) Raymond F. Burghardt  
Clerk.

Deputy Clerk.

APPLICATION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS



BEFORE ME, THE UNDERSIGNED AUTHORITY THOMAS J. CARROLL, WHO

AFTER BEING DULY SWORN, ACCORDING TO LAW, ON OATH DEPOSES AND SAYS:

- 1) THAT HE IS A CITIZEN OF THE UNITED STATES, AND OF LEGAL AGE; AND,
- 2) THAT BECAUSE OF HIS POVERTY HE IS UNABLE TO PAY THE COSTS OF THE INSTANT CAUSE OF ACTION, OR TO GIVE SECURITY OF FOR THE SAME, AND,
- 3) THAT HE IS A PAUPER WITHIN THE MEANING OF THE LAW (ADKINS v DUPONT, 335 U.S. 331); AND
- 4) THAT HE SEEKS REDRESS IN GOOD FAITH TO OBTAIN THE RELIEF TO WHICH HE VERILY BELIEVES HE IS ENTITLED.

WHEREFORE, IT IS RESPECTFULLY REQUESTED THAT THIS COURT GRANT LEAVE TO PROCEED HEREIN IN FORMA PAUPERIS FOR OTHERWISE AN INJUSTICE SHALL OCCUR AND AFFIANT WILL BE FORECLOSED RELIEF BY REASON OF HIS INABILITY TO PAY THE COSTS THEREOF.

STATE OF New York }  
COUNTY OF New York } ss.

Thomas J. Carroll  
AFFIANT: THOMAS J. CARROLL

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 31 DAY OF January 1974  
Anthony J. Lefebvre - Notary Public  
Palmer Station N.Y. 10573  
"AUTHORIZED BY THE ACT OF JULY 7, 1955  
TO ADMINISTER OATHS (18 U.S.C. 4004)".  
NOTARY PUBLIC OR OTHER AUTHORIZED  
OFFICIAL AUTHORIZED BY THE ACT OF  
JULY 7th, 1955 (18 U.S.C. 4004)

48

(OVER)

IN THE UNITED STATES OF AMERICA  
IN THE CASE OF  
**UNITED STATES vs. THOMAS CARROLL**

FOR  
AT

LOCATION NUMBER

PERSON REPRESENTED (Show your full name)  
**THOMAS JOSEPH CARROLL**

CHARGE/OFFENSE (describe if applicable & check box →)  
☒ Felony  
☐ Misdemeanor

**U.S. DISTRICT COURT**  
**Feb 11 1974**

1 ☐ Defendant  
2 ☐ Plaintiff  
3 ☐ Appellant  
4 ☐ Probation Violator  
5 ☐ Parole Violator  
6 ☐ Habeas Petitioner  
7 ☐ 2255 Petitioner  
8 ☐ Material Witness  
9 ☐ Other (Specify)

SOCKET NUMBERS  
Magistrate  
District Court  
Court of Appeals

**EMPLOYMENT**

Are you now employed? ☐ Yes ☒ No ☐ Am Self Employed

Name and address of employer: \_\_\_\_\_

IF YES, how much do you earn per month? \$ \_\_\_\_\_ IF NO, give month and year of last employment \_\_\_\_\_  
How much did you earn per month \$ 1000.00

If married is your Spouse employed? ☐ Yes ☒ No

IF YES, how much does your Spouse earn per month \$ \_\_\_\_\_ If a minor under age 21, what is your Parents or Guardian's approximate monthly income \$ \_\_\_\_\_

**OTHER INCOME**

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☐ Yes ☒ No

IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES

**CASH**

Have you any cash on hand or money in savings or checking account ☐ Yes ☒ No IF YES, state total amount \$ \_\_\_\_\_

**PROPERTY**

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☒ No see note on reverse side

IF YES, GIVE VALUE AND DESCRIBE IT

**DEPENDENTS**

MARITAL STATUS  
☐ SINGLE  
☒ MARRIED  
☐ WIDOWED  
☐ SEPARATED OR DIVORCED

Total No. of Dependents  
2

List persons you actually support and your relationship to them

**DEBTS & MONTHLY BILLS**

(LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)

Creditor	Total Debt	Monthly Payt.
APARTMENT OR HOME: Henson Mortgage Co.	\$ 1100.00	\$ 165.
American Express Co.	\$ 100.00	\$ 10.00
1st National Bank of Chicago	\$ 100.00	\$ 10.00
Beneficial Finance Co.	\$ 100.00	\$ 79.

and money here

SIGNATURE OF DEFENDANT  
(OR PERSON REPRESENTED)

I declare the above to be true and correct.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

208a

UNITED STATES OF AMERICA

73 CR. 855  
73 Cr. 972 (C.L.)

-against-

THOMAS JOSEPH CARROLL, et al.,

Defendants



It is hereby stipulated and agreed by and between the United States Attorney, on behalf of the "People" and the attorney for the defendant, VINCENT McCLOSKEY, and the attorney for the defendant, WILLIAM McCLOSKEY, that the record on appeal in the above referred actions shall include all filed documents in the related actions 73 CR 583, and 73 CR 606, as well as 73 CR 855 and 73 CR 972.

It is further stipulated and agreed by and between the parties that all of the exhibits introduced <sup>in</sup> evidence during the course of trial, shall be included in the record on appeal herein, ~~and that such exhibits will be forwarded by the United States Attorney to the Court of Appeals.~~

Dated: February 11, 1974

PAUL J. CURRAN  
U. S. ATTORNEY

By: John J. Kenney  
Asst. U. S. Attorney

W. J. Mart  
Attorney for Defendant,  
VINCENT McCLOSKEY

Louis T. Moscareo  
Attorney for Defendant  
WILLIAM McCLOSKEY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF :  
AMERICA :  
VS :  
THOMAS JOSEPH CARROLL, JR. :  
DOE, VINCENT McCLOSKEY, ETAL :  
-----X

Action Number

73CR 855

NOTED

FILED  
U.S. DISTRICT COURT  
JAN 25 11 55 AM '74  
S.D. OF N.Y.

## NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that VINCENT McCLOSKEY  
above named, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the \* FINAL JUDGMENT AND ALL PROCEEDINGS  
OF JANUARY 25, 19 74.

Signed

John F. Martin  
Attorney for  
JOHN F. MARTIN

342 MADISON AVE.

Address NEW YORK, N.Y.

Notice to: U.S. ATTORNEY SOUTHERN DISTRICT

2. SECOND CIRCUIT COURT OF APPEALS

3. VINCENT McCLOSKEY - DEFENDANT IN PERSON  
427 WEST STREET - FEDERAL HOUSE OF DETENTION  
NEW YORK, N.Y.

\* Insert whether order or final judgment;  
or part thereof appealed from.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

73 CR 855 (CMM)

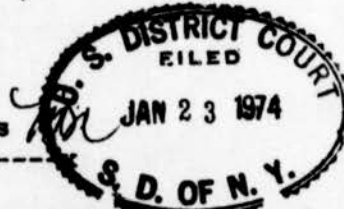
-----x  
UNITED STATES OF AMERICA

-vs-

THOMAS JOSEPH CARROLL, JOHN DOE, a/k/a "Jack",  
VINCENT McCLOSKEY, a/k/a "Mike", ROBERT E.  
RIPPY, a/k/a "Ripp", CHESTER CRAWFORD,  
PAUL CRAWFORD, TERRENCE DEWEY MYERS AND  
GEOFFREY MATTHEWS MANN,

NOTICE OF  
MOTION


Defendants



-----x  
PLEASE TAKE NOTICE that upon the annexed affidavit of  
JOHN F. MARTIN, attorney for defendant, VINCENT McCLOSKEY, a  
Motion will be made at this Court before the Hon. Charles M.  
Metzner, USDJ, on January 25, 1974 at 10:00 in the forenoon  
thereof, or as soon thereafter as counsel can be heard for Orders  
providing the following relief:

- 1/ Setting aside the verdict of the Jury;
- 2/ For a new trial to the defendant in the interest of  
justice;
- 3/ Entering Judgment of acquittal for the defendant;
- 4/ To dismiss the Indictment herein; and
- 5/ For such other and further relief as to the Court  
may seem just and proper.

Dated: New York, New York  
January 22, 1974

  
JOHN F. MARTIN  
Attorney for Defendant  
VINCENT McCLOSKEY  
342 Madison Avenue  
New York, New York 10017  
(212- 279- 6995)

TO: JOHN J. KENNY  
Assistant United States Attorney

-vs-

### Defendants

Count 1 of the Indictment has no validity and was brought in solely for the purpose of permitting the Government to introduce irrelevant and incompetent evidence not otherwise available to it to prove Counts 2 and 3 of the Indictment.



The framing of the Indictment wherein the defendant is charged with the capital offense of Murder in the First Degree under Count 2 and of Assault, which carries the mandatory imprisonment term of 25 years in Count 3, violates fairness, decency and due process in that it contains the Conspiracy Count set forth above.

The Court permitted evidence to come into the trial which should not have been permitted even under a Conspiracy.

The Statute, under Count 2 of the Indictment, is vague, indefinite and unclear and in violation of the Constitution of the United States. The Indictment charges the defendant unlawfully, wilfully, knowingly, with malice aforethought, and in the perpetration and attempted perpetration of a robbery, murdered and killed an employee of the United States Postal Service while he was engaged in the performance of his official duties. The Statute requires malice aforethought, as well as the commission of a killing during the course of a felony. It is unclear and indefinite as to its exact requirements. This was obvious during the course of the trial, when the Court, in its charge, instructed in essence, that the malice aforethought contained in the Statute could be shown from the general criminal intent of the defendants.

Count 3 of the Indictment sets forth an assault against a Postal Employee with general intent to rob and steal property of the United States. The Statute carries a mandatory term of 25 years in prison upon conviction. It is unconstitutional in that it discriminates on the punishment to be allocated to a defendant because the assault is perpetrated upon an employee of the Post Office during a crime involving United States property as contrasted to an assault upon other individuals under the same circumstances, except for their employment and official capacity.

The Court erred in denying the motions made before and during trial, to allow the murder and assault charges to be processed in a State Court.

The Court erred in not granting severance to the defendant Vincent McCloskey, when the case was called for trial on December 10, 1973. Obviously, the defendant's counsel had no time to prepare for a trial and the Court could easily have continued the trial against the other defendants if it wished, by severing against the defendant, Vincent McCloskey and giving his counsel a fair time to read, analyze and prepare the case and possible witnesses for trial. The Court had previously granted a severance to one of the other defendants for no apparent reason.

The Court erred in failing to charge the lesser counts of Murder contained in the Statutes under which Count 2 of the Indictment was brought.

The Court erred by not charging that malice aforethought was a specific requirement to be found by the jury, separate and independent from a general bad intent.

An analysis of the evidence adduced on trial, fails to prove the charges contained under the 1st, 2nd and 3rd Counts of the Indictment.

The Court erred in failing to instruct the jury that if they totally disregarded the testimony of the witness, Myers, that they would have to acquit the defendant on Counts 2 and 3 of the Indictment.

The procedure utilized by the United States Attorney and permitted by the Court of having virtually all of the defendants plead guilty with promises, either actual or implied, that they would be rewarded if their testimony was helpful against the defendants who went to trial, was illegal and violated fairness and due process. The defendants who availed themselves of their

Constitutional privileges and statutory rights to be tried by a jury of their peers, were discriminated against by the Government in that the Government offered certain deals to some of the defendants to compel them to testify against the defendants who stood trial and did not offer the same deals to all of the defendants who proceeded to trial. This was violative of due process and of the equal protection rights of the Constitution.

The record reveals many remarks, comments and rulings by the Court concerning the defendant, Vincent McCloskey, which adversely affected the defendant's right to a fair trial and from having the right to effective counsel of his own choosing. The following are a few illustrative instances culled from the record:

a/ In September, 1973, the Court on its own motion, ordered the defendant, Vincent McCloskey, to be examined for competency in Springfield, Missouri. On the same day, only one defendant was ready to go to trial and neither the Court, nor the prosecutor, nor anyone else was prepared to proceed to trial. The reason why the case did not proceed was that the Court was not prepared because of a question of tapes involving the defendants, Thomas Carroll and Vincent McCloskey, and because the Government, infact, was not ready to proceed to trial. Counsel for Vincent McCloskey, was not even present during a great portion of this Hearing concerning the tapes.

There were experts in the Court available to testify on the Question of the competency of Vincent McCloskey and the Court dismissed those experts and instead sent the defendant to Springfield, Missouri on its own motion.

Thereafter, the Court, time and time again, echoed and reechoed a claim that the only reason the trial did not proceed

in September was because the defendant, Vincent McCloskey, delayed the trial and because the defendant was a malingerer and the Court, over and over, repeated the fact that the defendant was a malingerer and he was solely responsible for the delay in trial.

b/ Prior to and during the trial, the Court interfered with the legal representation of the defendant, Vincent McCloskey not once, but on several occasions, resulting in a deprivation of the defendant's right to counsel of his own choosing. It affected his inherent right to effective counsel.

The defendant's family originally hired Donald Hopper and paid him a substantial fee of \$5,000.00. Thereafter, the defendant also hired Mr. Goldberg and paid him an even more substantial fee; to wit: the sum of \$15,000.00. When Mr. Goldberg was retained as attorney of record, Mr. Hopper continued to function for the defendant as co-counsel.

The record reflects that the Court evidently wrote letters on October 23, 1973 scheduling trial for November 26, 1973. At that time, the defendant, Vincent McCloskey, was incarcerated in Springfield, Missouri under the Court's Order for the examination and he subsequently was not returned until above November 19, 1973. The record further reveals that Mr. Goldberg, who was the attorney of record for the defendant, Vincent McCloskey, was on trial before Judge Knapp and would be occupied through the end of the year.

The record showed much agitation on the part of the Court in an effort to move the trial and the Court indicates therein that the defendant, Vincent McCloskey, would have to get another attorney. Prior to these episodes, however, the Court permitted co-counsel, Donald Hopper who had in fact been paid by the



defendant, Vincent McCloskey, to be relieved as co-counsel and to take another assignment representing another defendant in the case, all while the defendant, Vincent McCloskey, was incarcerated in Springfield, Missouri.

The records show threats by the Court to summarily summon the attorney for the defendant before it by the U.S. Marshals despite the fact that the attorney was actively engaged on trial before Judge Knapp in the same Courthouse. Mr. Goldberg was obviously distressed at the pressure placed upon him and indicated that he was caught in a bind and was not in a position to go to trial for the defendant who was incarcerated in Springfield, Missouri, because of his commitment to Judge Knapp.

The Court in the Minutes of November 19, 1973, expressed its belief that the defendant was a faker and did not require a Hearing on his competency.

The Court said that three weeks should be sufficient time for a new attorney to appear and prepare for trial on behalf of the defendant, Vincent McCloskey.

Again on November 20, 1973, the Court rather vigorously pressed the attorney for the defendant, Vincent McCloskey, and even though the Court had not seen a report on the examination at Springfield, ruled that the defendant should proceed to trial. The Court rejected an offer to try the case in January by Mr. Goldberg and instead, the Court said it was going to proceed on December 10th and specifically instructed Mr. Goldberg to tell the defendant's family that they must obtain new counsel. The Court in its drive to try the case before Christmas, indicated that it had informally contacted an attorney by the name of Mr. Panzer, who had been a Legal Aid Assistant, to undertake the representation of the defendant, Vincent McCloskey, in place of

Mr. Goldberg who was on trial. Actually, the defendant and his family did not know and had not even heard of Mr. Panzer. The Court then appointed Mr. Panzer to represent the defendant, Vincent McCloskey, and indicated that he would represent the defendant without any cost or charge to the defendant or to his family, even though the defendant had already expended \$20,000.00 in legal fees and was in a position to hire paid counsel of his own choosing. The family informed me that they were never notified to obtain other counsel and were met by a fait accompli brought about solely by the Judge who was to preside at the trial.

The Court manipulated counsel for the defendant, Vincent McCloskey, as follows: It dismissed or released Mr. Goldberg from representing him; it had previously authorized co-counsel hired by the defendant to be relieved and to act as attorney for another defendant in the case; it found Mr. Panzer, an attorney of its own choosing without consultation with the defendant's family, this approximately 2 weeks before the trial was scheduled, and made arrangements to have Mr. Panzer's fees paid by the United States Government. It subsequently developed that Mr. Panzer had not even consulted with the defendant concerning the on-coming trial as late as December 4, 1973, nor had Mr. Panzer consulted with the defendant's family at any time.

On December 3, 1973, the undersigned appeared before the Court and advised it that the family had requested that I speak to the Court and to the defendant to see about the possibility of appearing in the action. The undersigned was contacted when the family became apprehensive, knowing that a trial was scheduled for December 10, 1973 and knowing further that the defendant had not been consulted by any attorney to prepare for his trial.

The record indicates that the Court did not want to be met with another change of attorneys and requested that I represent to the Court that the undersigned would be ready to proceed to trial on December 10, 1973 when, in fact, the undersigned had not even spoken to the defendant nor retained to represent him. After talking with the defendant on December 3, 1973 and later meeting with the family, the undersigned made arrangements to appear before the Court on December 4, 1973 and formally requested substitution. The Court permitted the undersigned to represent the defendant, Vincent McCloskey.

On December 4, 1973, the Court also instructed the undersigned to submit Requests to Charge and a Memorandum of Law, no later than 5:00 P.M. December 7, 1973.

The next day or two was spent by the undersigned in attempting to obtain the file from the previous attorneys. Mr. Panzer had no file whatsoever, except for a form paper appointing him as the attorney of record and authorizing him to obtain fees for such representation from the United States Government. He didn't even have the Indictment, Bills of Particulars, or any papers. Mr. Goldberg's papers were requested but his office would not deliver them for two days and until a fee was paid to record copies of the documents.

On December 6th and December 7th, the undersigned commenced studying the file and requested the United States Attorney to permit him access to his file and to give him copies of all of the documents which he felt would not prejudice his case which were essential to the defense's knowledge of the case, but the United States Attorney refused to supply the papers unless they were specifically named. At this time, the official file contained very few documents and the undersigned didn't even have a copy of the Indictment. The undersigned made motions before

the Court, which included a request to sever the action as to the defendant, Vincent McCloskey, in order to properly prepare for the case.

On December 7, 1973, the Court by phone, ordered the undersigned to report to its chambers which compelled him to curtail discussions with the defendant in order to appear before the Court. The undersigned was then advised at about 4:45 P.M. to appear before the Court the following morning, Saturday, December 8, 1973 and several hours were spent attending before the Court submitting and discussing Motions which had originally been made returnable on December 10, 1973 but which the Court accelerated to December 8, 1973. The undersigned was unable to interview the defendant over the weekend because of his incarceration and the rules of the Marshal's Office and as a practical matter, it was physically impossible to read all of the documents involved in the case with the Indictments and Hearing and it was absolutely impossible to conduct any investigation, to interview any witnesses or to take any time to prepare for a defense of the action. The undersigned and his office staff worked day and night in an effort to help the defendant as much as possible, but the sheer physical limits of time as imposed by the Court, rendered it impossible to properly prepare for a defense. More so, in view of the fact that the defendant was charged with Murder in the First Degree, a capital offense; Assault, carrying a mandatory 25 year sentence and a conglomerate Conspiracy charge covering 15 co-conspirators and 10 co-defendants over a period of time ranging from January to September, 1973. The undersigned believes that the Court, in re-reading all of the Minutes which the undersigned will make available to it should it deem helpful on this Motion, will come to the realization and understanding that the defendant, Vincent McCloskey, was, in fact, deprived of his right to counsel and



that such deprivation violated his Constitutional rights and fair play.

For whatever reason, the Court seemed unduly preoccupied with the speeding up of the trial process and this preoccupation interfered with the defendant's right to a fair trial and deprived him of due process of law. Rather than go through the record at length, request is made to the Court to review the records and its constant referral to the necessity for proceeding with this trial as quickly as possible. In one instance, the Court indicated that the jury would be prejudiced if the case were carried between Christmas and New Years and throughout the proceedings there was a constant reaffirmation by the Court that this case would have to go to trial and would have to proceed quickly. The record reflects pressure on the defense counsel to speed up and prepare for trial; questioning of the jury as reflected in the record appeared to be in the undersigned's opinion summary and precipitate. Even one of the jurors commented on the sparsity of questions asked by the Court in selecting the jury. The Court told counsel during the course of the trial, that it would not permit wide cross examination by each counsel, but expected that there would be very little overlapping by counsel and that if one attorney covered one portion of the case, then it expected that the other attorneys would not cover the same portions of the case. The record reflects that the trial was expected to finish quickly and certainly before Christmas; the cross examination was sharply curtailed; the Court evidenced impatience with counsel in some instances in an effort to expedite the proceedings; the summation was severely limited.

A reading of the record will reflect that despite the fact this was a capital murder case, the Court expected a very

quick, expeditious trial and this pressure resulting from the Court's attitude, undoubtedly affected counsel in its trying the case and prevented the defendant from having a fair trial. On some occasions the record reflects that the Court did not allow counsel to make a motion when counsel felt that there was legal error. At times, the record indicates that the Court was more concerned with the efficiency and speed of the proceedings rather than with the substances and safeguarding of defendant's rights to a fair trial in conformance with due process under the centuries old concept of Anglo jurisprudence as updated by the Federal statutes, laws and Courts. Affirmatively, the Court proceeded to hear testimony beyond the normal Court day and into the evening in its pressure to quickly end the case. This was even more unfair to the defendant, Vincent McCloskey, who had newly appointed attorneys who did not even have the time necessary to look for witnesses and review the case with its client and to potentially arrange for an affirmative defense.

Testimony and other evidence was permitted into the trial of this action pertaining to illegal acts committed at times prior to the charges contained in Counts 2 and 3 of the Indictment and which acts were not listed as overt acts in Count 1 of the Indictment. The Court permitted endless testimony by witnesses that the defendant, Vincent McCloskey and other defendants had robbed a payroll in New Jersey sometime in March of 1973; had driven interstate in an attempt to hijack a truck sometime in March; had stolen an automobile in March; had stolen a truck in March and had participated in other illegal acts, none of which the defendant had been charged with or indicted for by any State or Federal Court.

The Court permitted this evidence after the prosecutor, in his opening statement, stated that he was going to show that the defendants on trial were bad men. A large portion of the testimony on trial, was in support of this proposition that the defendant, Vincent McCloskey, was a bad man and it undoubtedly affected the jury's verdict.

During the course of trial, the Court continuously permitted conversations and hearsay discussions ad infinitum. It permitted one defendant to say what other defendants said or allegedly said even without the presence of the defendant, Vincent McCloskey, and even when such conversations in no way pertained to the defendant, Vincent McCloskey, and to other defendants. The Court permitted into evidence endless hearsay statements and alleged oral admissions and conversations by some defendants which affected all of the defendants. Even if an argument can be made that Count 1 of the Indictment permitted this otherwise illegal evidence to be presented, the cumulative effect of such evidence tainted the overall trial and the jury, of necessity, had to consider such tainted evidence in the verdict which it rendered on Counts 2 and 3 of the Indictment.

The Defendant, Vincent McCloskey, had not even pleaded to the Indictment No. 855 when the case was called for trial on December 10, 1973 and he was compelled to proceed to trial immediately after pleading to the Indictment.

The Court commented and instructed the Jury that the prosecution and Defendant had equal availability of witnesses. This was obviously not so. The Government represented the Post Office and its employees and had the defendants and co-conspirators in jail or under such duress in plea bargaining sessions that all

of these witnesses attorned to the Government. It was unrealistic and improper for the Court to tell the jury that the defendant had access to the witnesses, most of whose location and whereabouts were not even known by the defendant but were instead contained in massive investigatory reports and files held by the Government Officials including the United States Attorneys' Office.

In order to expedite time, the Government offered the undersigned to subpoena and have available witnesses requested by the undersigned on behalf of the defendant, Vincent McCloskey. Many of these witnesses were not produced and made available by the Government and such witnesses reported directly to the Government and there was no opportunity for defendants to properly consult with and have access to such witnesses.

The prosecution committed prejudicial error which required a mistrial in its opening statement and summation in the following instances:

a/ It said it was going to prove the defendant, Vincent McCloskey and other defendants were bad men;

b/ It said in summation that the white defendants on trial imported black men to commit crimes in New York and implied prejudice which affected the jury's determination.

In its obvious attempt to expedite the trial of the action, the Court evidenced displeasure with counsel for the defendants during the course of the trial. This was done by facial expressions, comments and gestures indicating impatience, facial grimacing, sarcasm and voice intonation and other body movements which undoubtedly affected the jury's feelings toward the defendants and their counsel.



The procedure established by the Court in granting immunity to the testifying witnesses named as co-defendants on charges unrelated to the Counts set forth in the indictment, was erroneous and improper and prejudicial to the defendants on trial. Instead of having the defendants determine which questions they felt violated their Constitutional privileges and invoking their Constitutional rights, the Court, in essence, granted a blanket approval of immunity to testify in certain areas. This procedure prevented the defense attorneys and the defendants from properly cross-examining and questioning the witnesses. The Court even signed an Order granting a witness immunity before he appeared to invoke his Constitutional privileges. In this case, the United States Attorney was permitted to actually take codefendants and selectively grant them immunity from alleged acts which they were to testify to and solely knew about, to be used against the defendants who went to trial when such activities were not relevant or germane to the Counts of the Indictment and were brought in solely and wholly to prejudice the defendants, especially as to Counts 2 and 3 of the Indictment. The Statute giving the Attorney General the right to give such immunity, was not meant by Congress for the Courts and United States Attorney's Offices to use as weapons against defendants on charges under which they were not indicted but which were, at best, being brought in collaterally to prove that they were "bad men".

The Court erred in denying the motions presented to it by Notices of Motions dated December 6, 1973 and argued before it on December 8, 1973.

There were questions on admissability of an alleged oral admission on the part of the defendant, Vincent McCloskey. The circumstances surrounding this oral admission, indicated that the

defendant and was not effectively represented by counsel at the time, due to the Court's negotiating for a change of counsel and the defendant was questioned by the United States Attorney and by law enforcement officials while he was in prison and without any counsel appearing with him, although he, in fact, was entitled to be represented by counsel and had paid substantial sums of money to be so represented. The Court at least should have had a Huntley Hearing to inquire into the facts and circumstances surrounding this oral admission to determine its admissibility.

The procedure used by the United States Attorney and condoned by the Court to permit certain defendants and particularly the actual killers to plead guilty to a lesser count and then use them as witnesses against the defendants standing trial, was improper, illegal and unconstitutional. The Government favored the actual killers and their confederates and gave them the right to escape a mandatory life sentence, a mandatory 25 year sentence but they refused to accord that same right to the other defendants, but instead pressed the other defendants for information and testimony unrelated to the Indictment itself.

The Court failed to deliver a written opinion on the Motions denied by it on December 8, 1973 although it promised such opinion by December 10th or December 11, 1973.

On Summation by counsel for the defendant, Vincent McCloskey, the Court interrupted counsel and injected itself with its recollection of the facts and thereafter on several occasions, the United States Attorney objected and there were observations by the Court, all of which was prejudicial to the defendant and helped sway the jury.

The record reflects that the Court oftentimes summed up

answers for the prosecution witnesses and gave versions of fact favorable to the prosecution at the expense of the defendant. In some instances, the Court would support testimony or a version of the testimony of the prosecution's witnesses or make excuses why their testimony was vague. The overall interjection by the Court of its own view of the testimony and the quite obvious limitations on cross-examination imposed by the Court on defense counsel, was detrimental to the proper presentation of the case and was highly prejudicial to the defendant, Vincent McCloskey. One illustrative instance is the following: On the afternoon of April 5, 1973, the date in which the indictment alleged the murder occurred and one of the days of an overt act listed under Count 1 of the Indictment and the date on which Count 3 of the Indictment was predicated, testimony was adduced and established in cross-examination of Terrence Myers, who had admitted actually pulling the trigger and killing one man and injuring another, that Myers was not at a particular location earlier testified to by other witnesses and earlier testified to by the witness himself. It was elicited that the witness was actually someplace else in an apartment with someone else. The Court sharply curtailed any further questioning and thus prevented the undersigned from ascertaining the name and circumstances where the witness was, thus depriving the defendant of possible witnesses and evidence contradicting the prosecution's case. The protective screen of the Court for this self-admitted killer was even more evidenced on a question propounded by the undersigned on the credibility of the witness, when the undersigned asked the witness where he obtained funds to purchase a certain automobile owned by him. The witness retorted that it was none of counsel's business. The Court, on its volition, stated that it sustained



the witness's objection, without interference by the United States Attorney's Office and in a manner which certainly indicated to the jury that the information, in fact, was none of the undersigned's business. In fact, it was a relevant question concerning going to the credibility at least of the admitted killer. Much of the cross-examination that was pertinent and relevant, was curtailed by the Court in its obvious effort to protect the rights of these admitted killers, felons, thieves and convicts called by the Government to make a case against the defendants who proceeded to trial.

The foregoing examples are only a few of the many instances and items contained in the record which reflect the Court's error in permitting in some testimony and preventing other testimony from being permitted into the record of the acts and circumstances surrounding the charges set forth in the Indictment.

The Court erred in permitting testimony that the witness Myers identified pictures of the defendant, Vincent McCloskey.

Evidence was permitted that indicated individuals were part of a conspiracy back in the Fall of 1972, although Count 1 of the Indictment limited the conspiracy from January 1, 1973 to approximately September of 1973. This was highly prejudicial against the defendants and prevented the defendants from properly being apprised of the charges being brought against them.

The defendant, Vincent McCloskey, was held in \$200,000.00 bail which was tantamount to a denial of bail. His being closely confined in United States institutions with limited availability to meet with counsel to prepare for the case, deprived the defendant of a fair trial and of the right to effectively consult and work with counsel in his defense.



One of the defendants, John Turner, was a Government Agent cooperating with the Government prior to the arrest of the defendants and who cooperated with the Government throughout the proceedings. He was represented by counsel and his counsel was consulting with co-counsel for the other defendants, prejudicing their position with the possibility of information being leaked back to the Government. This schizoid position of the defendant, John Turner, in cooperation with the Government, contaminated the counsel relationship of the defendants and was illegal, unconstitutional and improper.

The Court erred in denying the preliminary motions brought by the defendant.

The Court erred in denying the Motions for a mistrial made during the trial and in denying motions to strike certain testimony and exhibits and permitting the same to be entered over objections.

The Court erred in its rulings as to the admissibility of certain evidence and exhibits as shown by the various objections taken on the trial.

The Court erred in denying the Motions made by the defendant at the end of the Government's case and at the end of the trial.

The Court erred in some of its instructions to the jury and in the denial of the defendant's Requests to Charge.

The verdict was not supported by substantial competent evidence.

The verdict was contrary to the weight of the evidence.

There was prejudicial and fatal variances between the Indictment and proof adduced on the trial in support thereof.

The Court erred in having read back to the jury during its deliberations, the direct testimony of two of the witnesses and then certain selected extracts from the cross-examination of the two witnesses and the re-direct examination of the same witnesses.

The Court erred in denying the defendant's Motion to suppress certain evidence and in admitting said evidence upon the trial of the case against him in violation of his Constitutional Rights.

The defendant was deprived of a fair trial and substantially prejudiced by the pretrial activities of the United States Attorney and the Governmental Agencies while defendant was without effective counsel during the period of approximately November 23rd through November 27, 1973.

As a matter of law, there was reasonable doubt as to the defendant's guilt.

The Motion for a mistrial should have been granted when the prosecution, in front of the jury and over objections, was permitted to bring out the fact that the defendant, William McCloskey, had been employed by the United States Post Office and they had records available which records subsequently were not permitted into evidence. This obviously, had an impact on the jury and was prejudicial to the defendants on trial.


The admission of documentary evidence against one or more of the defendants prejudiced the other defendants against whom it was not admissible and permitting such evidence and documents to be admitted during the course of the trial, was error on the part of the Court.

WHEREFORE, the defendant, Vincent McCloskey, prays for  
an Order:

- 1/ Setting aside the verdict of the jury;
- 2/ For a new trial to the defendant in the interest  
of justice;
- 3/ Entering Judgment of acquittal for the defendant;
- 4/ To dismiss the Indictment herein; and
- 5/ For such other and further relief as to the Court  
may seem just and proper.

  
JOHN F. MARTIN

Sworn to before me this 22nd  
day of January, 1974

  
GLORIA MCTODY  
Notary Public, State of New York  
Qualified in Orange County  
Term Expires March 30, 1976

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

291a  
FILED  
U.S. DISTRICT COURT  
JAN 25 11 55 AM '74  
S.D. OF N.Y.

-----X  
U.S. of America :  
VS. :  
Thomas Joseph Canall et al :  
and William McCloskey :  
-----X

Action Number

73 CR 855-~~972~~

MEMO-7

NOTICE OF APPEAL

TO

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Notice is hereby given that Thomas Joseph Carroll  
above named, hereby appeals to the United States Court of  
Appeals for the Second Circuit from the \* Final Judgment  
JAN 25, 19 74.

Signed

Michael P. Dienzo  
Attorney for Per

Rosemary D. Calline

15 Columbus Circle

Address N.Y.C.

Notice to:

- 1- U.S. Attorney - Southern District
  - 2- Second Circuit Court of Appeals
  - 3- Thomas Canall - Federal House of Detention
- \* Insert whether order or final judgment: 427 West Street  
or part thereof appealed from.



# United States District Court FOR THE

SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

No.

Thomas Joseph Carroll

73 or. 855

On this 25th day of January, 1974 came the attorney for the government and the defendant appeared in person ~~and~~

It IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury

has been convicted of the offense of unlawfully, wilfully, knowingly, with malice aforethought and in the perpetration and attempted perpetration of a robbery in violation of Title 18, U.S.C., Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck (Title 18, U.S.C., Sections 1111, 1114 and 2.) and did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter property of the United States, with intent to rob, steal and purloin such mail matter did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon (Title 18, U.S.C., Sections 2114 and 2.) and a conspiracy so to do (Title 18, U.S.C., Section 371.)

as charged in counts (1)(2) and (3) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It IS ADJUDGED that the defendant is guilty as charged and convicted.

It IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for ~~xx~~ a term of LIFE on count TWO(2). TWENTY FIVE(25) YEARS on count THREE(3) and FIVE(5) YEARS on count ONE(1). Sentence on counts (1) and (3) to run concurrently with each other and concurrently with sentence imposed on count (2).

It IS ADJUDGED that the defendant is to remain in the Federal Detention Headquarters at 427 West St., New York, N.Y., pending appeal.

RECORDED  
JAN 28 1974

It IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

*Charles M. Metzner*  
United States District Judge.  
*Raymond F. Burghardt*  
Clerk.

<sup>1</sup>Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. <sup>2</sup>Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to suspension and probation. <sup>6</sup>For use of Court to recommend a particular institution.

**United States District Court**  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK



United States of America

v.

No.

Vincent McCloskey

73 or. 855

On this 25th day of January, 1974, came the attorney for the government and the defendant appeared in person and by John F. Martin Esq.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a verdict of guilty by a jury

has been convicted of the offense of unlawfully, wilfully, knowingly, with malice aforethought and in the perpetration and attempted perpetration of a robbery in violation of Title 18, U.S.C., Section 2114, did murder and kill an employee of the United States Postal Service, to wit, William Hickey, while he was engaged in and on account of the performance of his official duties, to wit, the guarding of said United States mail truck (Title 18, U.S.C., Sections 1111, 1114, and 2.) and did assault a person, to wit, Crawford Lawrence, having lawful charge, control and custody of mail matter property of the United States, with intent to rob, steal and purloin such mail matter did wound and put in jeopardy the life of the said Crawford Lawrence by use of a dangerous weapon (Title 18, U.S.C., Sections 2114 and 2.) and a conspiracy so to do (Title 18, U.S.C., Section 371.)

as charged in counts (1) (2) and (3) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for ~~a period of~~ a term of LIFE on count TWO(2). TWENTY FIVE(25) YEARS on count THREE(3) and FIVE(5) YEARS on count ONE(1). Sentence on counts (1) and (3) to run concurrently with each other and concurrently with the sentence imposed on count (2).

IT IS ADJUDGED that the defendant is to remain in the Federal Detention Headquarters at 127 West St., New York, N.Y., pending appeal.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

~~THE COURT RECOMMENDS COMMITMENT TO~~

*Charles F. Metzner*  
United States District Judge.  
*Raymond F. Burghardt*  
Clerk.

<sup>1</sup>Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel. <sup>2</sup>Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. <sup>3</sup>Insert "in count(s) number" if required. <sup>4</sup>Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. <sup>5</sup>Enter any order with respect to suspension and probation. <sup>6</sup>For use of Court to recommend a particular institution.

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294a

MICROFILM  
JAN 28 1974

U. S. DISTRICT COURT  
FILED  
JAN 28 1974  
S. D. OF N. Y.

United States v. Thomas Joseph Carroll,  
et al., 73 Cr. 855

The defendant Thomas Carroll was represented by privately retained counsel, Mr. Dorenzo. At the time the jury returned the verdict on December 26, 1973, counsel requested permission to reserve all motions until the day of sentence. The day of sentence was today, January 25, 1974.

Mr. Dorenzo did not appear in court this morning because of illness, but he forwarded a letter to the court which has been made part of the record. He joined in all motions made by Mr. Martin on behalf of the defendant Vincent McCloskey. That motion consisted of 19 pages and covered practically every possible objection that could be thought of in law or fact. Mr. Martin's motion papers were submitted to the court on January 23, pursuant to the condition imposed in granting permission to reserve all motions to the day of sentence. Obviously the court was affording itself some time to carefully review any papers submitted on behalf of the defendants in advance of ruling on the motions and imposing sentence.

55

I disposed of Mr. Martin's motion from the bench as appears in the transcript of the sentencing, and specifically included that the same ruling would apply to the defendant Carroll. The defendant Carroll offered motion papers in the courtroom, which he had prepared, and requested an adjournment of the sentence. I saw no reason to adjourn the sentence since I could not conceive of any material in the motion papers that would justify such an adjournment. However, I did accept the papers and informed Mr. Carroll that I would review them even though they were submitted late and I was prepared to impose sentence.

The sentence imposed was a mandatory one of life imprisonment under Section 1111 of Title 18. There was nothing that counsel could say or do on defendant's behalf to influence the court in view of the mandatory nature of the sentence. Furthermore, Mr. Carroll admitted that he refused to be interviewed by the probation officer so that the report handed up to the court would not have been any help even if the court had discretion as to the sentence.



I have reviewed the papers submitted by Mr. Carroll and my original inference was correct in that it does not raise any matter that was not raised in the Vincent McCloskey motion, except for a claim of perjury.

I might say that I did not read the charge to the jury and by facial expression and emphasis direct a verdict of guilty as claimed by the movant. Obviously, if I had done so, at least one of the four counsel for the defendants would have made some mention of that fact at the time.

In any event, the claims of perjury are not sufficient to grant defendant Carroll's motion. Assuming that the defendant had taken the stand and categorically denied these portions of the government's evidence, which he had a right to do, the most he would create would be a question of fact for the jury. These witnesses were cross examined by Mr. Drenzo very carefully and very thoroughly.

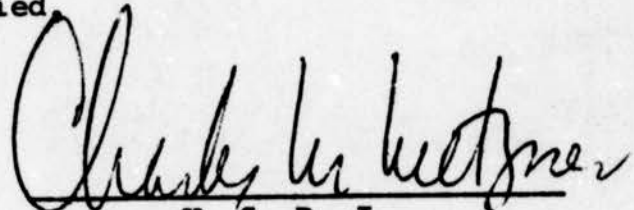
The claimed perjury on direct examination by the witnesses Turner and Crawford was known to the defendant and his counsel. How they handled this

matter was one of trial tactics for them to decide.  
This is not a case of the discovery of perjurious  
testimony after the event.

The motion is denied.

So ordered.

Dated: New York, N. Y.  
January 25, 1974

  
U. S. D. J.

MEMO ENDORSED

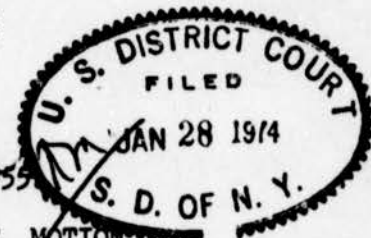
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298a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
"  
UNITED STATES OF AMERICA,  
"  
-against-  
"  
THOMAS JOSEPH CARROLL, et al,  
"  
Defendants  
-----X

S.73 CR 855

NOTICE OF MOTION

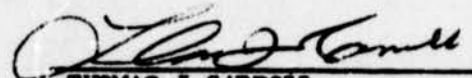


SIR :

PLEASE TAKE NOTICE that upon the annexed affidavit of THOMAS CARROLL per se. the defendant, a Motion will be made to this Court before the Honorable Charles M. Metzner, United States District Judge for the Southern District of New York, at the United States Courthouse, Foley Square, New York New York, on the 25th. day of January, 1974, at 10:00 in the forenoon thereof, or as soon thereafter as defendant can be heard for an order providing the following relief :

- 1 : To have the verdict of the Jury set aside: JUS ET FRAUS NUNQUAM COHABITANT.
- 2 : For a new trial for the defendant in the interest of justice:
- 3 : To enter a Judgment of acquittal for the defendant :
- 4 : To dismiss the indictment herein:
- 5 : And for such orther and further relief as to the Court may seem just and proper.

Dated : New York, New York  
January 23, 1974.

  
THOMAS J. CARROLL  
Defendant per se.  
427 West Street  
New York N.Y. 10014

TO: JOHN J. KENNY  
Assistant United States Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
"  
UNITED STATES OF AMERICA,  
"  
-against-  
"  
THOMAS JOSEPH CARROLL, et al,  
"  
Defendants  
-----X

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

THOMAS J. CARROLL, being duly sworn, deposes and says:

I am the defendant THOMAS J. CARROLL acting per se. herein and I am making this affidavit in support of the motions set forth in the annexed Notice of Motion herein.

1 : The indictment, as prepared, is unconstitutional and violates due process of law and does not adequately apprise the defendant of the charges against him.

2 : The alleged Conspiracy in Count 1 of the indictment, covers the period January 1, 1973 through September 1973, despite the fact that the original defendants were all incarcerated or apprehended in June of 1973, and despite the further fact that evidence was adduced on trial to alleged actions by other parties prior to January 1, 1973.

3 : The overt acts listed in the Indictment, consisting of three innocuous meetings and no criminal activities per se.

4 : Before and after the trial had commenced, New co-conspirators and co-defendants were in discriminately added.

5 : That Selective Prosecution had been used, denying the defendants due process of law and caused a disparage of laws.

6 : That the Court disregarded a Constitutional statutory right thereto because the defendant was denied the right to be co-counsel in his own defence.

7 : Count 1 of the indictment has no validity and was brought in solely for the

~~purpose of committing the~~



PURPOSE OF PERMITTING THE Government to introduce irrelevant and incompetent evidence not otherwise available to it to prove Counts 2 and 3 of the indictment.

8 : The framing of the indictment wherein the defendant is charged with the capital offence of Murder in the first degree under Count 2 and Assault, which carries the mandatory imprisonment term of 25 years in Count 3, violates fairness, decency and due process in that it contains the conspiracy Count set forth ~~##~~ above.

9 : The Court permitted evidence in the trial which should not have been permitted even under a Conspiracy

10: The Court erred by not granting several of the defendants motions for a mistrial.

11: The inconsistency, and contradicting testimony by Government witnesses and the fact the verdict against the defendant is not supported by substantial evidence and is contrary to the weight of the evidence.

12 : The Court erred in restricting the defendants cross-examination, summation and the right to question Government witnesses, and by ~~#####~~ continuously pressing the defence counsels to finish before Christmas, without regard for the defendants and yet gave the United States Attorney three times the time he originally asked for.

13 : The statute under Count 2 of the indictment, is vague, indefinite and unclear and in violation of the Constitution of the United States. It is unclear and indefinite as to its exact requirements. This was obvious during the course of the trial, see pg.198 line8 through pg.200 line9 of the transcript of trial, and when the Court in its charge, instructed in essence, that the malice aforethought contained in the Statute could be shown from the general criminal intent of the defendants.

14: The Court erred in denying the motions made to allow the murder and assault charges to be processed in a State Court.

15: The Court erred in refusing to charge the jury as required by the defendant. in so much that the Court refused to even read them. And again erred in charging the jury.

16: The Court erred in permitting the Government, in its opening and closing statements to the jury, to make prejudicial comments which prevented the defendant from being

## U.S. COURT OF APPEALS:SECOND CIRCUIT

U.S.A.,

Appellee,

against

CARROLL, et al,

Defendants-Appellants.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

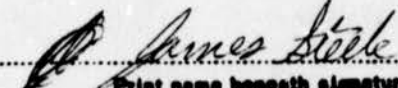
I, James Steele, Being duly sworn,  
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

250 West 146th Street, New York, New York  
That on the 10th day of June 1974 at Foley Square, New York

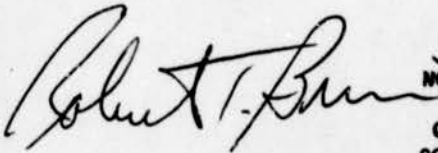
deponent served the annexed *Appellants Appendix* upon  
Paul J. Curran-U.S. Attorney Southern District-Attorney for Appellee

the in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 10th  
day of June 1974

  
Print name beneath signature

JAMES STEELE



ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 0418950  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975

